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Vol I

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J.E.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 135 4

MAJOR RAYMOND LISENBA, PETITIONER,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF CALIFORNIA

PETITION FOR CERTIORARI FILED JUNE 8, 1940.

CERTIORARI GRANTED OCTOBER 26, 1940.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 133

MAJOR RAYMOND LIENBA, PETITIONER,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA

WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF CALIFORNIA

VOL. I

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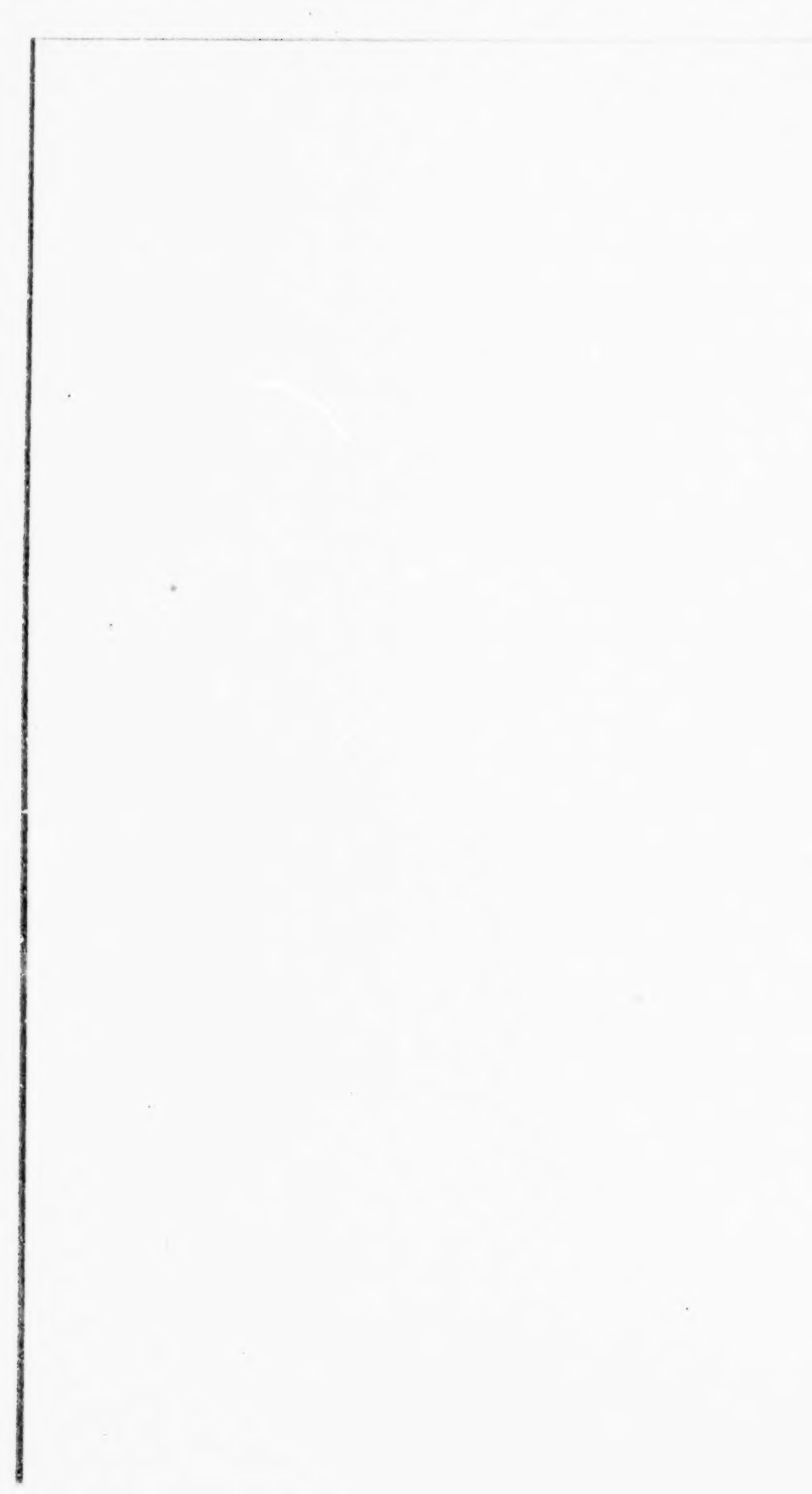
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IN SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES

Department No. 43

Hon. Charles W. Fricke, Judge

No. 64218

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

MAJOR RAYMOND LISENBA, Defendant

Statement of Evidence

APPEARANCES:

For the People: Eugene P. Williams, Esq., and John Barnes, Esq., Deputies District Attorney of Los Angeles County.

For the defendant: Russell E. Parsons, Esq., S. J. Silverman, Esq., and William J. Clark, Esq.

H. R. Person and James O'Brien, Official Reporters.

[fol. 17] MRS. VIOLA PEMBERTON, called as a witness in behalf of the People, being first duly sworn, testified as follows:

The Clerk: State your name, please.

A. Mrs. Viola Pemberton.

Direct examination.

By Mr. Williams:

Q. Mrs. Pemberton, you are the wife of James Pemberton?

A. Yes, sir.

Q. How long have you been married?

A. About 9 months.

Q. Prior to that what was your name?

A. Viola Lueck.

Q. Did you know Mary James during her lifetime?

A. Yes, sir.

Q. For how long had you known her?

A. A little over two years.

[fol. 18] Q. Did you know the defendant, Major Raymond Lisenba, also known as Robert L. James?

A. Yes, sir. I knew him under the name of James only.

Q. Did you have a conversation by telephone with Mr. James on the 5th day of August, 1935?

A. I did.

Q. Where were you?

A. I was in my apartment.

Q. And did Mr. James call you, or did you call him?

A. He called me.

Q. Had you known him prior to that time?

A. I had known him as long as Mary had known him, one day less.

Q. Well, how long prior to the 5th of August?

A. May of that same year.

Q. Did you recognize his voice when he called you on the telephone?

A. Yes, sir.

Q. What time of the day was it when he called you?

A. About ten minutes to 2:00; close to 2:00 o'clock.

Q. In the afternoon?

A. Yes, sir.

Q. What did he say to you?

A. He told me that Mary was not feeling well enough to come down——

Mr. Silverman: Just a little bit louder, please.

[fol. 19] A. I was to get dinner if Mary was well enough to come in to town, and I was invited out to the house, and that is the reason that Mr. James was going to call——

By Mr. Williams:

Q. Never mind about the reason that he called. What did he say?

A. He said that Mary was not well enough to come in to town, and for us to come out there to dinner.

Q. What else did he say?

A. He said that she had the vegetables ready, and that we should stop to get steaks on the way, and come out after I got through work.

Q. Did he make any arrangements to meet you?

A. Yes, 7:30 that evening.

Q. Where?

A. In front of the telephone office where I am, at 5th and——

Q. Never mind, but did you meet him that evening at 7:30?

A. Yes.

Q. Was any one else with you?

A. Well, Mr. James——

Q. What did you do?

A. We drove up to a market to buy the steaks, and got some cottage cheese, and he said he would get that in case Mary couldn't eat a steak, and went out to Mr. James' home.

The Court: Keep your voice up, please. We cannot hear [fol. 20] you.

Mr. Williams: I know that it is difficult, but will you just talk loud enough so I can hear you where I am now, that is, what you have to say?

A. I will try.

The Court: You will have to try to talk louder than that.

Mr. Williams: Just remember this, that you cannot talk too loud, so let your voice out. You say you went to the James residence?

A. Yes, sir.

Q. Is that located at 3229 Verdugo Road, in La Canada?

A. It is Verdugo Road, but I am not positive of the address.

Q. Had you been out there before?

A. Yes, sir.

Q. What time did you reach the James home?

A. Oh, I should judge about ten after, or a quarter past 8:00.

Q. Now, when you got there, did you approach the house, that is to say, did you go up in the driveway, or stop in front of the house, or which way did you go?

A. We drove up in the yard, and parked the car in the rear of the house.

Q. Now, referring to People's Exhibit 1 for identification, calling your attention to the fact that the gray portion

along the side of this is the driveway—I will call your attention to People's Exhibit No. 2, the gray portion along the easterly side on the driveway, where, with reference to the garage, did you stop the car?

A. Right at the back of the house, on the driveway.

Q. That is, about the northeast corner of the house?

A. Yes, sir.

Q. This being north, and this being east, and that being about at the northeast corner of the house?

A. Yes.

Q. All right. Did you get out of the car?

A. Yes, sir.

Q. And what did you do then?

A. Well, there weren't any lights, and I made the remark that they must be away, or there would be lights in the house.

[fol. 22] —and we walked in the house, James' house, and no one answered, and we looked in all the rooms and couldn't find her and then we looked for her outside. We kept calling her and nobody answered. Then I do not know who suggested—I did not, but someone suggested getting a flashlight to look in the grounds for her. Possibly she had fainted in the shrubbery and Mr. Pemberton went through the front and looked in the front way and I went into the bedroom to the left of Mary's and I was in the back bedroom, when I heard Jimmie make the remark—

Q. Who made the remark?

A. My husband, he said, "Oh, my God", and I hollered as to what it was, and he didn't answer. Mr. Pemberton said, "Buck up; she is gone".

The Court: What was the expression? I didn't get it.

(Record read by the reporter.)

A. Or "Brace up"; probably that was the expression.

By Mr. Williams:

Q. What did you do?

A. We walked over and saw Mary's head in the water, and the rest of her on the ground.

Q. Indicating the head as being in the water?

A. Yes, sir.

Q. That included her head and shoulders in the water?

A. Yes, and her hair was afloat over the top of the water.

Q. How was the head turned, did you say?

A. The head was faced right down.

[fol. 23] Q. In the position that you indicate on the diagram, People's Exhibit No. 1 for identification, where would it be?

A. Well, there is the bedroom there—and is that supposed to be the cellar door, that part there?

Q. I think it is.

A. I think that is the cellar door and then the walk and right close to the window is where the body was.

Q. Now then, if I can get a pencil, perhaps you can mark it on the diagram roughly, that is the position of the body. I will hand you a blue pencil for that purpose.

A. It is just—I should judge—

Q. Mark an oblong showing how far the body was extended into the bottom and how far out—

Mr. Parsons: Now, we cannot hear the witness.

Mr. Williams: She says, "About here".

A. This is the walk around the pond.

Q. Well, this is the walk right on here—

A. Yes, sir, and she was over onto the walk part, over the curb and into the pond.

Q. And as she lay there, her head and shoulders were down in the pond and her hips and legs were out across the walk?

A. They were.

Q. And was she lying generally, in a north westerly and southeasterly direction with the head towards the northwest?

A. Yes.

Q. The points are indicated on the map here.

[fol. 24] A. Well, possibly—

Q. That is the head was toward the northwest and the feet to the northeast?

A. Yes.

Q. Did you look at her at that time?

The Court: Just for the record; let the record show that the witness has placed, crossing the double line, a—

A. A straight line.

The Court: In place of the other and the crossing walk,—going in a southeasterly direction onto the walk. Mark it with a figure 1.

Mr. Williams: Now, you may resume the witness stand.

The Court: Mr. Clark, I would rather not have you standing up there while the witness is being examined.

By Mr. Williams:

Q. Mrs. Pemberton, did you get close by there?

A. I stood toward the northwest of the pond and held the flashlight, and Mr. Pemberton was taking the body out of the water and when I saw the water dripping I turned my head and I could see.

Q. And were you there when she was taken from the water?

A. Yes, by Mr. Pemberton and I believe Mr. James.

Q. Where was the body then placed?

A. Right on the walk there next to the front—

Q. Did you observe at that time whether there was any fence or screen or anything of that sort around the pond?
[fol. 25] A. Yes, there was.

Q. And from the point where her body was, where was the screen?

A. The weight of her body had crushed the screen and it was under her body.

Q. What generally was the type of screen around the body?

A. Well, I don't know about it, but I would call it on the order of chicken wire.

Q. Yes. And about how high was it?

A. I would judge 2½ feet or possibly 3 feet.

Q. Now, after the body was taken on the sidewalk what did you and Mr. James and Mr. Pemberton do?

A. We walked in the house, Mr. James, into the front room and he was crying.

Mr. Parson: May I have that answer?

(Answer read by the reporter.)

By Mr. Williams:

Q. Was there any conversation at that time?

A. He kept saying, "Oh, I am so sick", and "What will I do without her?"

Q. And after that, then what happened?

A. Well, Mr. Pemberton took Mr. James' car and went to get a policeman or someone to assist, and he found a

radio police car and brought them back, and later a doctor came and gave Mr. James something for his stomach.

[fol. 26] Q. And then what next happened?

A. We stopped there for I don't know how long. He was a long while out in the swing out on the front porch. I imagine it was until 10:00 or later before they said we wasn't needed there, and we could go home, so I went to my apartment, and Mr. James and Mr. Pemberton went with me.

Q. Now, Mrs. Pemberton, when you were looking there in the house, about the house for Mary, before discovering her body, did you see anybody open the front door?

A. I don't remember. I know the front door was open, but to see it being opened at the time, I can't remember that exactly.

Q. Did you see Mr. James at or near the front door of the house?

A. Yes, sir.

Q. And by "the front door", Mrs. Pemberton, I refer to the door indicated at the southerly end of the living room, between the living room and the front porch?

A. Yes, sir.

Mr. Clark: If your Honor please, at this time may I suggest that the last three questions are rather more leading than they should be. I don't propose objecting at this time, but I want to direct counsel's attention to it.

Mr. Williams: I will try to avoid leading the witness.

The Court: All right.

By Mr. Williams:

Q. Now, what, if anything, did you see Mr. James do [fol. 27] at or near the front door?

The Court: Just a minute. May we have the question read. I don't know whether you said what you intended to.

(Question read by the reporter.)

The Court: Oh, I misunderstood you.

A. He just stooped and was picking up a note.

By Mr. Williams:

Q. Did you see the note?

A. Yes, sir.

Q. And did you read it at that time?

A. I don't know if I read it, or he read it out loud.

Q. I will show you now a brown piece of paper with some handwriting on it, and ask you whether you recognize that?

A. Yes, I do.

Q. What is that?

A. A note from Ethel—

Q. Never mind what it is from. Is that the note that Mr. James picked up at that time, that you saw?

A. Yes.

Mr. Williams: We ask that this be marked People's Exhibit No. 3 for identification at this time, if your Honor please.

The Court: It will be so marked.

By Mr. Williams:

Q. Did you see any other writing in the house?

A. Yes.

Q. When did you see that?

A. After the officers came, and we were looking around to [fol. 28] see if by any chance there would be a note, or anything written, and I walked into the dining room, and there was a little dish in the center of the table, and this letter was in the center of the dish.

Q. Was that in an envelope?

A. Yes, a sealed envelope, no stamp on it, but addressed to her sister in Nevada.

Q. Did you open it?

A. Yes, I did.

Q. Did you read it?

A. Yes, sir.

Q. I will now show you a grayish-blue envelope, and a letter, and ask you to examine both of those, and state whether they are the envelope and its enclosure which you found in the dining room?

A. Yes, they are the same.

Q. Did you have any conversation with Mr. James with reference to this particular note?

Mr. Clark: Just one moment. That is objected to upon the ground that it is immaterial, and no foundation laid. While the question may be preliminary, I prefer to make the objection now that the statements or declarations of

Mr. James are not admissible until the corpus delicti is established.

The Court: That objection will be overruled upon the ground it does not disclose the ground of the objection. [fols. 29-31] Mr. Williams: May we have the question, Mr. O'Brien?

(Question read by the reporter.)

Mr. Clark: May I ask that the witness be instructed to answer the question categorically?

The Court: Yes.

Mr. Williams: Just answer that "yes" or "no", Mrs. Pemberton.

A. Yes.

Q. What was the conversation?

.

[fol. 32] A. He instructed me to open the letter.

Q. All right. Tell us about the conversation, if any?

[fol. 33] A. The only conversation was that I was instructed to open the letter, and I read the letter, and the officers stood next to me at the time.

Q. Did you read the letter out loud?

A. Yes, sir.

[fol. 34] Q. You had known Mary Busch for about what length of time?

A. A little better than two years. I met her in about the month of October, 1933.

Q. And during that time how frequently did you see her?

A. When I first met her I would see her about every two weeks. She was the beauty operator that did my hair, and gave me my manieures.

Q. After that did you see her more frequently?

A. We lived together.

Q. For how long did you live together?

A. About two months.

Q. During that period of time did you, from time to time, observe her writing her name, and other things?

A. Yes, sir.

[fol. 35] Q. Now, I have in my possession here three cards containing some writing in pencil. I will ask you whether you have seen those cards before?

A. I have.

Q. And did you see the pencil writing put upon those cards?

A. Yes, sir.

Q. Was it put on in your presence?

A. Yes, it was.

Q. By whom?

A. By Mary Busch.

Q. And Mary Busch is the lady who later became Mary James?

A. Yes.

Q. And the lady whose body you saw on the 5th of August, as you described?

A. Yes.

Mr. Williams: We ask, if your Honor please, that these three cards, as one exhibit, be received in evidence at this time as exemplars.

Mr. Clark: Just one moment.

The Court: Just a minute, Mr. Clark. Do you think it would be preferable to have them as one exhibit, or three exhibits?

Mr. Williams: I think as one exhibit would be satisfactory, your Honor.

[fol. 36] The Court: They may be marked Exhibit 5 for identification at this time.

Mr. Williams: That will be No. 5, will it?

The Court: Yes.

By Mr. Williams:

Q. When you saw the body of Mary James did you observe how it was dressed?

A. Yes, sir.

[fol. 37] Q. How?

A. She had a pair of wash pajamas and bedroom slippers.

Q. Can you tell us something of the color or general appearance of the pajamas?

A. It was an orchid flower design with yellow trim, a big yellow organdie bow and yellow bows at the bottom of the leg of the pajamas.

Q. I will now show you a picture which I will ask his Honor to mark People's Exhibit No. 6 for identification.

The Court: 6 for identification.

By Mr. Williams:

Q. And ask you to state whether or not that is a picture of any person whom you know?

A. That is Mary's body. Her face is terribly swollen.

Q. You recognize it, however, as the body of Mary James?

A. Yes, sir.

Mr. Williams: This will be 6 for identification. You may cross examine.

Cross-examination.

By Mr. Silverman:

Q. Mrs. Pemberton, you have known both Mary and Mr. James——

The Court: Mr. Silverman, might I suggest, so that we won't have any confusion hereafter, the Court prefers to have counsel remain at counsel table while the witness is being examined. To have counsel perambulating around the court room creates confusion and distracts the attention of the jury.

[fol. 38] Mr. Silverman: I purposely came over there so that she would speak louder, your Honor, and for no other purpose.

The Court: I think you are just as far from her at the counsel table as you would be there.

By Mr. Silverman:

Q. You have known both Mary and Bob James for a number of years, haven't you?

A. Mr. James for about a year, but Mary, longer than that.

Q. And you and Mary were close friends?

A. Yes, sir.

Q. You worked together and lived together at one time, didn't you?

A. Not worked, but lived together. She was a beauty operator.

Q. How long did you live with Mary in the apartment?

A. About three months.

Q. And then about what time did you meet Mr. James, the defendant?

A. I don't know the exact date; it was just before Mary went down to the beauty shop, some time in May.

Q. And that was about four or five months before Mr. James and Mary were married, isn't that right?

A. Yes.

Q. Then during that time, between that time and the death of Mary, you saw Mr. James quite often, didn't you?

A. Yes.

Q. And you were close friends and saw each other several [fol. 39] times a week?

A. Yes, sir.

Q. Did you have occasion to observe the conduct of Mr. James and his wife, Mary, before they were married? I mean, with relation to friendship, love and affection?

Mr. Williams: That is objected to as not proper cross examination, irrelevant, incompetent and immaterial.

The Court: Overruled.

The Witness: Answer?

The Court: You may answer.

A. Well, I wasn't with the two of them so very much.

The Court: Well, did they appear to be loving, that explains the question, before they were married?

A. Well, I would say yes.

By Mr. Silverman:

Q. And they were together a good deal of the time before their marriage, weren't they?

A. Yes, sir.

Q. Then, on the 4th day of August, 1935, did you see Mr. James? That was on Sunday.

A. Sunday? No, sir.

Q. Did you see Mrs. James at that time?

A. No, sir.

Q. Did you see either Mr. or Mrs. James on the 3rd day, which would have been Saturday?

A. No, sir.

Q. When did you see Mary James and Bob James before [fol. 40] the 5th day of August, 1935?

A. It was the Wednesday before, but the date, I wouldn't know.

Q. Well, it was the Wednesday before that Monday that she passed away, either on Sunday or Monday?

A. Yes.

Q. And what was the occasion of your seeing her then? Did you have an appointment with her or did you just go to visit her as she came to visit you?

A. No, we went out to the place to visit her.

Q. You went out to the place to visit her?

A. Yes.

Q. Was that at night or during the daytime?

A. It was at night.

Q. Was Mr. James there?

A. Yes, sir.

Q. Was there any discussion there as to your marriage with Mr. Pemberton?

Mr. Williams: That is objected to as not proper cross examination.

The Court: Sustained.

By Mr. Silverman:

Q. Now, there was some talk with reference to your marriage?

A. There was.

Mr. Williams: Objected to on the same ground.

The Court: Objection sustained, the answer is stricken. [fol. 41] It appears to be neither material or cross examination.

Mr. Silverman: I am leading up to a fact, if the Court please, and I submit—

The Court: You are going outside of the cross-examination. This witness's testimony started on the 5th of August. I permitted you to go beyond that on a question of the relationship of the deceased and her husband, but that is the extent of the Court's ruling so far.

By Mr. Silverman:

Q. Now, Mrs. Pemberton, on the 5th of August, that was Monday, you had an appointment to have dinner with Mr. and Mrs. James, didn't you?

A. It was not definite. We was going to have dinner together, but whether it was at my place or out at La Canada, that was left until Mr. James was to call me and let me know which it would be.

Q. And that appointment, whether it was definite or not, was made Wednesday when you last saw her alive?

A. Yes, sir.

Q. And with that in view, you spoke with Mr. James over the telephone Monday afternoon, was it?

A. Yes, sir.

Q. And for that purpose of going out there and having dinner with them you and Mr. Pemberton went out there?

A. Yes, sir.

Q. And as you stated, on your way out there, you bought steaks, and other things, to have dinner?

[fol. 42] A. Yes, sir.

Q. To prepare for dinner?

A. Yes, sir.

Q. And now when you saw Mr. James before you went out there, you met him, I understand, in front of the Telephone Company office where you were working at the time?

A. Yes, sir.

Q. How did Mr. James look? Did he look any different than he did, or show any different actions than he did before on any other time that you had seen him?

A. No, sir, I didn't notice any difference in him.

Q. He was the same as he was at any other time?

A. Yes, sir.

Q. Then whose care did you get into? You drove down there in a car, I understand?

A. Mr. James drove.

Q. On the way did you stop to buy some meat and things that you needed?

A. Yes.

Q. Who went out to get the meat?

A. Mr. James did.

Q. You and Mr. Pemberton remained in the car?

A. Yes, sir.

Q. And then when you got the meat you drove on to the house at La Canada, the house which is depicted on the [fol. 43] blackboard?

A. Yes.

Q. And you got there about a quarter past eight?

A. I imagine about that time. I didn't look at my watch.

Q. Approximately that time?

A. Yes.

Q. When you got to the house, who got out of the car first?

A. Mr. James walked in the house first. I was sitting in the middle and I was the last one to get out of the car.

Q. But you followed each other in the house, isn't that right?

A. Yes, sir.

Q. Mr. James came in the house and was the door locked or unlocked?

A. Unlocked.

Q. And you walked right in and the house was dark?

A. Yes, sir.

Q. And you made some light there so that you could see about the house?

A. Yes.

Q. And did you proceed to call for Mary?

A. Yes, sir.

Q. And Mary didn't answer?

A. No.

Q. And you went in search for Mary, is that right?

[fol. 44] A. That is right.

Q. Then the grounds I assume were dark, too, weren't they?

A. Yes.

Q. And you had a light struck by means of a searchlight?

A. Two flashlights.

Q. Who got the flashlights?

A. Mr. James got them.

Q. Did Mr. Pemberton, your husband, have a flashlight also?

A. Mr. James handed one to him.

Q. And you went out to look around the grounds to see if you could find Mary?

A. The two men went out.

Q. And you stayed in the house?

A. For a few minutes.

Q. What did you do while you were in the house, just sat down there?

A. No, I went in the one bedroom to find a pair of her bedroom slippers and I couldn't find any in that bedroom and I walked to the other bedroom.

Q. You knew Mary was sick for some period?

A. Yes.

Q. And did Mary tell you what was the matter with her?

Mr. Williams: Objected to as not proper cross-examination.

The Court: Sustained.

By Mr. Silverman:

Q. And then did you follow Mr. James and Mr. Pemberton [fol. 45] out in the yard?

A. When Mr. Pemberton called I went out.

Q. And Mr. Pemberton went out one way and Mr. James another, or did they both go together?

A. I didn't see either one walk out of the door; I don't know, because I walked to the bedroom to put on my slippers and I didn't notice them.

Mr. Silverman: May I have the last answer, Mr. Reporter?

(Answer read by the reporter.)

Q. Then Mr. Pemberton—you weren't married at that time, of course, were you?

A. No.

Q. You were married later on?

A. Yes.

Q. When you heard Mr. Pemberton's voice calling you came out of the house?

A. Not at first. The first remark he made I did not. It was after he called Bob, by that time I had my oxfords off and the slippers on and I ran out of the house.

Q. And you saw the body?

A. Yes, I did.

Q. And now, during the last six or seven weeks or eight weeks before the death of Mary, you had occasion to observe Mary's health?

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[fol. 46] MRS. JAMES PEMBERTON resumed the stand and testified as follows:

Mr. Silverman: Will you read the last question, please?

The Reporter: The other reporter has it.

Mr. Silverman: That is all right.

[fol. 47] Cross-examination (Continued).

By Mr. Silverman:

Q. Now, Mrs. Pemberton, after you followed your husband out to where the body was lying, how close did you come to where the body was lying?

A. Close to the end of the pond.

Q. Close enough so that you could observe the body?

A. Yes, sir.

Q. And have you indicated exhibit—What exhibit is it?

Mr. Williams: Exhibit No. 1.

By Mr. Silverman:

Q. Have you indicated where you made the mark here, that was right on the edge of the fish pond, is that right?

A. Yes.

Q. And did you see the position of the body? Can you describe the position of the body as you saw it?

A. Well, I don't know whether her arm was in the water or just up close to the body.

Q. And you cannot tell the position of her arm, can you?

A. No.

Q. Can you tell what the position of her legs were?

A. Yes, straightened out, like that.

Q. Did it have the appearance of her having fallen over that net?

Mr. Williams: That is objected to as incompetent, irrelevant and immaterial.

The Court: Sustained.

[fol. 48] By Mr. Silverman:

Q. She was leaning over the net?

A. Yes, sir.

The Court: Might I suggest that counsel has used the word "net". There was nothing in the record about a net.

Mr. Silverman: I understood there was a net, or a screen.

The Court: The word "net" was not used.

Mr. Silverman: "Screen", then. That is what I meant, anyway.

Q. Now, what part of her body was lying over the screen?

A. The upper part.

Q. Above her breast, or——

A. I was too excited to know that definitely.

Q. And her head was partly in the water, is that right?

A. It was in the water. All you could see was her hair floating.

Q. And with the exception of the hair, the rest of the head was submerged in the water?

A. Yes, sir.

Q. Was she lying on her stomach, or back, or side?

A. Her breast is just about the part where the curb would be on the pond.

Q. Did you have occasion to observe the water in the pond?

A. No, I don't know the depth of it.

Q. How many inches would you say, or feet, was there between her face and the bottom of the pond?

[fol. 49] A. I wouldn't know, not knowing the depth of the water.

Q. Well, that is about as much as you can tell us, as to the position of her body, is that right?

A. Yes, sir.

Q. Now, then, did the body remain there until the police arrived?

A. It was taken from the water, but left laying there, on her back.

Q. Who took her from the water?

A. Mr. Pemberton and Mr. James—I don't know how much help he was, trying to help get her out of the water.

Q. What do you mean by that?

The Court: You didn't see how much help he was?

A. No.

By Mr. Silverman:

Q. Is that what you want to say?

A. Yes, sir. Mr. Pemberton did most of it, because he said that the shoulders were wet, and his hands seemed to slip off.

Q. Well, Mr. James did assist, didn't he?

A. Yes.

Q. And the body was allowed to remain out of the water by the side of the pond?

A. Yes.

Q. Until the police officers came?

A. Yes, sir.

Q. And were you there when the police officers arrived?
[fol. 50] A. Yes.

Q. Did they go out and view the body?

A. Yes.

Q. And they moved the body?

A. I believe so. I didn't go with them. I stayed on the front porch with Mr. James.

Q. A little louder?

A. I stayed on the front porch with Mr. James.

Q. And what was the condition of Mr. James' mind and health at the time, his demeanor, while you were there on the porch?

The Court: Just a moment. That question is compound, and also is not a competent question.

Mr. Williams: We object to that—

Mr. Silverman: Well, I withdraw that question.

Q. Can you state how Mr. James acted while he was with you on the porch?

A. He was crying, and very sick to his stomach, and he was very warm. I was so cold that I was going in to get a blanket, or something, to put about me.

Q. And that condition continued for how long a period?

A. It wasn't very much, and he just said that he could not get along that way, and how sick he was.

Q. Well, how long did that continue, how many days and nights?

A. Oh, that evening.

[fol. 51] Q. That evening?

A. Yes.

Q. Then when the officers came, shortly after that, did you leave the place?

A. We stayed until they told us we could go. They had not taken Mary away then.

Q. Did you see them take her away?

A. No, sir, we were on our way to Los Angeles.

Q. And you were accompanied by Mr. James and Mr. Pemberton?

A. Yes, sir.

Q. And where did you go?

A. To my apartment.

Q. Did Mr. James accompany you?

A. Yes, sir.

Q. Did he remain there?

A. Yes, sir.

Q. And how long was Mr. James with you in your apartment?

Mr. Williams: That is objected to as not proper cross examination, and immaterial.

The Court: Objection sustained.

Mr. Silverman: Did Mr. James remain there for any period?

The Court: The objection was sustained to that question, Mr. Silverman.

By Mr. Silverman:

Q. Now, when you first came to this place where Mr. and Mrs. James were living, did you observe a note about the [fols. 52-53] premises, on the door outside, or on the premises not inside the house?

A. I saw this note with Ethel's signature on it.

Mr. Williams: Referring to People's Exhibit 3 for identification.

Mr. Silverman: And that, you know, is the note that Ethel wrote?

A. I didn't see her write it, but I knew she wrote it. Mr. James picked it up.

Q. Did he read it?

A. Yes, sir, he read it.

Q. That was before you went in the house?

A. No, we were in the house.

Q. You were in the house at the time?

A. Yes.

Q. Had you already known of the death of Mrs. James?

A. No, that was before we knew.

Q. Before you knew?

A. Yes, sir.

Q. But Mr. James made no remark of that note in your presence?

A. He made a remark about it, that the note was put there Monday.

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[fol. 54] JAMES PEMBERTON, called as a witness in behalf of the People, being first duly sworn, testified as follows:

The Clerk: State your name, please.

A. James Pemberton.

Direct examination.

By Mr. Williams:

Q. Mr. Pemberton, do you know Mary James—you knew her in her lifetime, did you?

A. Yes.

Q. And you knew the defendant, known to you as Robert L. James?

A. Yes, sir.

Q. Approximately how long did you know the defendant?

A. Since May of 1935.

Q. And how long did you know Mrs. James?

[fol. 55] A. Approximately the same time. I met them both together.

Q. Now, do you recall having met the defendant in Los Angeles on the 5th day of August, 1935?

A. I do.

Q. When and where did you meet him?

A. Well, he came out to the apartment at 6th and Coronado—

Q. And were you there?

A. Yes.

Q. Was anybody else there?

A. No.

Q. From that point did you and Mr. Jones go someplace?

A. Yes, we went over to the telephone office on Drexel—at the Drexel office there, between 7th and 8th.

Q. And did you meet anybody there?

A. Yes, I met my wife.

Q. She was at that time with Miss Lueck?

A. Correct.

Q. And from that place did the three of you go someplace?

A. Yes, we went to La Canada.

Q. And to what place?

A. 1329 Verdugo Road.

Q. To the James house?

A. Yes, sir.

Q. You had been there before, had you?

A. Yes, sir.

[fol. 56] Q. When you got there, was the car driven into the driveway?

A. Yes, sir.

Q. In the back of the house?

A. Yes, sir.

Q. And did you and Mr. James and Mrs. Pemberton enter the house?

A. Yes.

Q. By what method?

A. We entered by the back door.

Q. And what did you observe as to whether or not there were any lights on?

A. There were no lights. I believe there was some question as to why the house was dark.

Q. Now, state, if you know, what happened after the time that you arrived at the house?

A. I went into the house, through the back door into the kitchen, and there were no lights on, and we turned the lights on as we went, and I think my wife and Mr. James were both calling for his wife, Mrs. James, and there was no answer, and the house was dark, so we went through all the rooms, and as we went to open up the front door to see if there was any one on the porch, he found a note, stating that some one had been there that day, or the day before. There was no way of telling when it had been left there. Mr. James picked up the note, if I remember rightly, [fol. 57] and read it to us, before we went out on the porch, and there was no sign of Mrs. James on the porch. And we had not—Mr. James at the time we were there the week—

Q. Never mind what happened the week before.

A. I am trying to lead up to something there.

Q. Well, just tell what happened at this particular time.

A. Well, from a former conversation—

Q. Just a moment. Leave out the former conversation.

The Court: Just tell what you did.

By Mr. Williams:

Q. Leave out the former conversation, and state what Mr. James did, and what Mrs. Pemberton did.

A. Well, because we all thought—

Q. Do not tell that. Just tell what you did. I might say that witnesses are not *premitted* to think.

Mr. Clark: Witnesses are not permitted, and lawyers haven't the ability.

The Court: That is an assumption that we can count on.

Mr. Clark: Thank you, your Honor, for that.

The Court: You may proceed.

A. We went to look where—there was a possibility that she might have fainted—

Mr. Williams: Just a minute. We move to strike that out.

Mr. Clark: Well, I think the entire matter is competent.

The Court: I was interrupted, and did not hear counsel.

Mr. Clark: The witness replied "there was a possibility that she may have fainted."

[fol. 58] The Court: That will be stricken.

By Mr. Williams:

Q. Just tell us what you did.

A. We started out to look for her.

Q. Did you have any light?

A. No—Mr. James got some flashlight to look for her. After we looked through the house, why, he suggested to get some lights and look outside, and so we got the light, and he went out in the back of the house, and I went around in front of the house. I was familiar with the front grounds of the house, and I had not been in the back of the house. And I went around through the front yard, and looked all over the front yard. The yard is fairly ample. In coming back on the west side of the house there is a shrubbery in there, and it leads—there is a little walk that leads through the shrubbery and alongside the fish pond.

Q. By the fish pond?

A. And as I walked through I found Mrs. James' body there.

Q. Well, describe the position of the body.

A. Her head was in the water. Her head was—I imagine there was a portion of her shoulders in the water, and one of her arms—her right arm, I believe, was folded underneath her, and her left arm was laying at her side. And [fol. 59] her feet were straight—as near as I can remember now, her feet were straight out across the walk behind.

Q. Was she lying on her face or on her back?

A. She was on her face.

Q. Directly on her face, would you say?

A. Well, she had her left arm under her body, lifted her shoulder, but her face was in the water. She was faced down in the water.

Q. Was her entire head covered by the water?

A. I couldn't state definitely as to that. I noticed the hair floating in the water and I couldn't say definitely whether her head was completely covered or not.

Q. What did you do when you saw her body there?

A. I made an exclamation at the time. Then I got up and went around the back. I called Mr. James and went around to the back of the house to meet him to try to keep him from coming around there and it was a somewhat gruesome spectacle and I didn't think that——

Q. What did you say to Mr. James?

Mr. Silverman: Let him finish the answer, please.

The Court: I think what the witness was saying was not competent. I think the witness was properly stopped. Proceed.

A. As nearly as I can remember now I told him to brace up. I told him he had a shock. I told him Mrs. James was dead.

By Mr. Williams:

Q. Then what did you and James do?

A. Mr. James, I tried to keep him from going around to [fol. 60] the fish pond, but he was determined to go around there. I went around with him. He kneeled down beside Mary, Mrs. James, and he tried to lift her back; he tried to lift her out of the water. He didn't seem to be able to do any good, and I got down and got hold of him and her shoulder and I pulled her back just so her head was out of the water, pulled her back towards the walk, and finally I got him up and around the house. My wife had come out in the meantime, and she was standing right there and I told her to take him in the house and from then on I got into the car and first I went up to the "Y" of the road and I couldn't find a telephone there so I turned and went down to the Sheriff's office in Montrose and there was a police officer there that called the radio car.

Q. Now, let's get back to the position of the body. Where would you say the hips were with reference to the curbstone which runs around the fish pond?

A. Well, her hips would be somewhere towards the middle of the walk or a little to the side, towards the fish pond, a little to the west side of the walk.

Q. How much of her body would you say was on the west-erly side or the pond side of the curbstone?

A. Well, from pretty near half way up the trunk of her body—well, the center of the trunk of her body—would be lying over the stone parapet or the rock parapet around the pond.

[fol. 61] Q. Did you see a wire fence at the top of the fish pond there?

A. I did.

Q. Describe the position of the wire fence at or near where the body was.

A. The wire fence was mashed down underneath the body.

Q. Was that underneath the upper portion of the body?

A. Yes.

Q. And now, you saw the point which has been marked number 1 on People's 1 for identification, you see that there. I will ask you whether that fairly indicates about the general position of the body?

A. Well, I would say it was a little further north.

Q. ~~Well~~ now, we will get a pencil, and will you mark it? I will hand you a blue pencil and bearing in mind, Mr. Pemberton, that one inch on this map is equivalent to about two feet, and bearing in mind the size of Mary, try to indicate as nearly as you can the general size and position of her body as it lay there as you saw it that night.

A. I will just mark this with an oblong.

Q. Yes.

A. I am not very good at drawing.

Mr. Williams: You have now marked what isn't an oblong, but is generally the shape of a body. May I mark it a little more heavily, your Honor?

The Court: Yes, and also number it "2" while you are at it.

[fol. 62] Mr. Williams: This will be number 2. And the head in which direction?

A. The head is slightly toward the north.

The Court: Towards the center of the pond?

A. Yes, towards the center of the pond.

Mr. Williams: That is in a general north westerly direction?

A. Yes.

Q. And the feet in a general south easterly direction?

A. Yes, sir.

Q. Was she alive or dead at the time you picked her up?

A. She was dead.

Q. Did you observe how she was dressed?

A. Well, I would not say I observed her at the time, because I wasn't sure of it. I was at a later period but that would not be of any interest here to you.

The Court: Do you mean that you had a better opportunity later on to observe the clothing that she had on?

A. No, but I just happened to know the pajamas that she had on at the time, although it didn't enter my mind as to what her clothing was.

The Court: I see.

A. I could not have stated definitely at the time whether it was pajamas or whether it was a dress.

Mr. Williams: I will now show you a picture and ask you to examine that and state whether that picture is a picture of any thing that you saw out there that night.

[fol. 63] A. It is.

Q. What is this a picture of?

A. That is the picture of the fish pond.

Q. That picture shows which side of the pond?

A. That picture shows the east side of the pond, the side towards the house.

Q. Does that include the portion of the pond in which her body was lying at the time that you got out there?

A. That is correct.

Mr. Clark: Mr. Williams, will you oblige us by telling us when the pictures were taken?

Mr. Williams: These pictures were taken sometime in May.

Mr. Clark: Of this year?

Mr. Williams: Of this year.

Mr. Clark: Thank you.

By Mr. Williams:

Q. Is this a correct representation of the fish pond and the surroundings so far as they appear in the picture, as they appeared at that time?

A. So far as I can remember, yes.

Mr. Williams: We offer this in evidence, if your Honor please.

Mr. Clark: To which we object.

Mr. Williams: I have already shown these to counsel.

Mr. Clark: We have seen them, but I object on the ground that they are incompetent, in that it is not shown that they were taken at or near the time of the death of Mrs. James, [fol. 64] nor has it been shown that the conditions have been changed in any material respect since that time.

The Court: The witness answered that it did represent it as he saw it.

Mr. Clark: But he didn't say that the conditions were the same.

The Court: Let me ask the witness one question. Mr. Pemberton, having seen that photograph, does that fairly represent the appearance of the fish pond as it existed on the 5th of August of last year?

Mr. Clark: Just a minute; I will have to object to your Honor's question.

The Court: Of course, you are privileged to object to the Court's question.

Mr. Clark: On the ground it calls for incompetent evidence and an opinion that it is not shown that the witness is competent to express. If I may ask the witness two or three questions.

The Court: Go ahead.

By Mr. Clark:

Q. Mr. Pemberton, directing your attention to the photograph and at the same time to your recollection of the shrubbery there, these photographs show a great deal taller shrubbery than you saw there last August, don't they?

A. Well, I would imagine they would, yes.

The Court: Not your imagination, Mr. Pemberton, but your recollection.

[fol. 65] A. I would not state definitely as to that. I never paid particular attention.

Mr. Clark: That is the point, your Honor.

The Court: The objection will be overruled. It will be marked in evidence as 7.

Mr. Williams: This will be number 7, your Honor?

The Court: It will be number 7. Suppose you mark the number on the back in red, Mr. Williams, as we proceed along with the pictures.

Mr. Williams: I have just done that. I show you another picture purporting to be a picture of the pond, and ask you whether that is a fair representation of another portion of that pond as it appeared on and about August 5th, 1935?

A. Yes.

Q. Are you able to state from looking at that picture what portion of the pond it represents?

A. Yes, that represents the south east portion—or rather the north east.

Q. The north east portion of the pond?

A. Yes.

Mr. Williams: May this be received in evidence?

Mr. Clark: To which we object on the ground that it is incompetent and that no foundation has been laid for its introduction, in that it has not been shown that the conditions depicted by it, and particularly the shrubbery shown upon it, are in the same condition that they were at the time [fol. 66] alleged in the indictment.

The Court: The objection will be overruled. Mark it 8 in evidence.

By Mr. Williams:

Q. I will show you a third picture taken from a different angle of what appears to be the same pond, and ask you whether or not that is a correct representation of that pond and its immediate surroundings as you remember them to have appeared on the 5th of August and during that period in 1935?

A. Yes.

Q. This shows the entire pond?

A. That shows the entire pond.

Mr. Williams: We offer this in evidence, if your Honor please.

Mr. Clark: To which we object upon the same grounds as we stated to the last offer, your Honor.

The Court: Objection overruled. Mark it 9 in evidence.

Mr. Williams: Now, if your Honor please, may I at this time show these three pictures to the jurors?

The Court: You may do so.

Mr. Williams: I think it will be of some assistance to them. I am showing the jury now Exhibits 7, 8 and 9.

The Court: I think we will take our recess after the jury has seen the photographs, before going into any further testimony.

Mr. Williams: If your Honor please, a juror has just [fol. 67] asked me a question.

The Court: Will you just ask the question out loud, please?

The Juror: This coping of the fish pond, it doesn't show any netting that the body was supposed to lay on.

The Court: That will be cleared out undoubtedly by the testimony of the witnesses. We will take our recess at this time. The jury will heed the admonition heretofore given. I will ask that all persons remain seated until the jury has left the courtroom.

(Whereupon an adjournment was taken until 2 o'clock P. M.)

[fol. 68] Wednesday, June 24th, 1936; Afternoon Session,
2 o'Clock P. M.

The Court: The record may show all parties present. You may proceed, Mr. Williams.

JAMES PEMBERTON resumed the stand and testified as follows:

Mr. Clark: Were you through, Mr. Williams?

Mr. Williams: No, I hadn't finished.

Direct examination (Continued).

By Mr. Williams:

Q. I refer you again to People's Exhibits 7, 8 and 9, being several pictures of the fish pond, and I direct your atten-

tion to the fact that there is no wire at or about that pond shown in the pictures. Was there a wire about the pond on the night that you discovered Mary James' body?

A. There was.

Q. And I direct your attention to a coil of wire which appears in the court room here, and ask you whether that wire appears to be similar in its general appearance to that which was around the pond at the time you discovered the body?

Mr. Clark: That is objected to on the ground that it is wholly incompetent, irrelevant and immaterial.

The Court: Overruled.

A. It was.

[fol. 69] Mr. Williams: May I at this time ask that this wire be marked for identification as People's Exhibit 10 for identification?

The Court: People's Exhibit 10.

Mr. Clark: May I ask if that is the same wire?

Mr. Williams: Yes, it is.

Mr. Clark: Have you knowledge of that?

Mr. Williams: No, I only have witnesses who will so testify.

Mr. Clark: Very well, Mr. Williams, pardon the interruption.

The Court: Mark it 10 for identification.

By Mr. Williams:

Q. I show you People's Exhibit No. 3 for identification and ask you to examine that and ask you to state whether or not you have seen that before?

A. Yes.

Q. When and where?

A. It was the note that Mr. James picked up on the 5th of August at his home.

Mr. Williams: You may cross examine.

Cross-examination.

By Mr. Clark:

Q. Mr. Pemberton, first, I am going to ask you to take your time, to be sure you understand the questions. If you

don't understand them, indicate that, and after you have understood and had sufficient time, to answer them as [fol. 70] directly as possible. You will do that, won't you?

A. Yes.

Q. And now, around what time in the evening upon this day that you identify as the 5th of August was it that you saw Mr. James, as nearly as you can fix the hour?

A. Well, I could not answer that definitely, because there is quite a time elapsed since that. I think it was somewhere around a quarter of 6:00, if I remember rightly, or a quarter after; I forget which.

Q. And when you saw him on that occasion he came to some place where you were, is that correct?

A. Yes sir, correct.

Q. I assume then that you met him pursuant to some appointment, is that also correct?

A. That is correct.

Q. The fact is that you had a dinner engagement to eat dinner at his house that evening, you and the lady who is now your wife, is that the situation?

A. Correct.

Q. Now, when you first saw Mr. James upon that occasion did you notice anything in his manner or demeanor that was different from the manner and demeanor you had observed upon his part at other times?

A. No.

Q. And as I understand, he was driving a car at that time when you saw him?

[fol. 71] A. That is correct.

Q. Did he get out of the car and knock, or did you come to the car while he was seated in it?

A. Well, I don't remember just exactly the circumstances of that.

Q. Very well, Mr. Pemberton, we will pass to something else. At any rate, you entered the car and rode with him for some considerable distance before you met Mrs. Pemberton, didn't you?

A. No, the distance was only about three blocks, I guess, two or three blocks.

Q. And in riding those two or three blocks, were you riding in the driver's seat or in the tonneau, that is in the front seat or the tonneau of the car?

A. I was in the front seat.

Q. And now, sitting there by Mr. James in that front seat, did he appear any more pale than he does now?

A. No.

Q. Did you notice any trembling of his hands or his body?

A. No.

Q. Did he appear to you at that time to be in any way depressed?

A. No.

Q. Then, as I get it you drove three blocks up and picked up Mrs. Pemberton?

A. That is correct.

[fol. 72] Q. And that was all here in the City of Los Angeles, I take it?

A. That is also correct.

Q. And you then had quite a little ride with him to this place on Verdugo Road, didn't you?

A. That is correct.

Q. That was a matter of some, should we say, 12 or 15 miles?

A. Yes.

Q. All of that, isn't it?

A. I imagine that is approximately it.

Q. And during all of that time you were engaged in casual conversation?

A. Yes.

Q. And Mr. James took part in that conversation with you and Mrs. Pemberton?

A. Yes, sir.

Q. He spoke and talked just as you were in the habit of seeing him talk?

A. Yes, sir.

Q. Now, did he drive directly to the house, or did he stop?

A. He stopped at a market on the way up there and made some purchases for the dinner.

Q. And purchases of things to eat?

A. Yes.

Q. When you reached the place, do you remember whether [fol. 73] the sun was still shining?

A. No, it was—well, it was just dusk. It wasn't really dark yet. It was dusk.

Q. Sort of between the dark and the daylight, is that the distinction?

A. Yes, sir.



Q. Lights were not lit, were they?

A. No, sir.

Q. It was still light enough that you could see objects distinctly around you?

A. No it was not.

Q. It was beginning to get a little dim?

A. Yes.

[fol. 74] Q. Now, was there any reason stated by Mr. James for entering the house from the rear?

A. None at all.

Q. Was that the only manner you had been accustomed to enter the house?

A. Yes.

Q. So there was nothing unusual about the way you went into the house?

A. Nothing at all.

Mr. Clark: Have you the exhibits?

Mr. Williams: Why, I have them right over here.

Mr. Clark: What about No. 10? It is over here. We can inspect that if we care to.

Q. Now, do you remember whether the door was locked, or unlocked, when you reached the house?

A. The door was unlocked.

Q. And the house was in darkness, I take it?

A. That is right.

Q. And do you remember whether the window blinds were down, or up?

A. No, I couldn't say as to that.

Q. You didn't notice that at the time?

A. No, sir.

Q. Do you remember if Mr. James took his bundles in when he went in the house, or did he leave them in the car?

A. I couldn't say.

[fol. 75] Q. In other words, you didn't pay much attention to that, did you?

A. Yes.

Q. What part of the house did you go into? I withdraw that question. This rear door, that you went to, gives access, if you know, to what room in the house, Mr. Pemberton?

A. It gives access to the kitchen, the porch first, and then the kitchen.

Q. Let us look at this map, that has been testified to as being a map drawn to scale, showing the house, and indicating the location of the different rooms. Do you so recognize it?

A. I do.

Q. Now, I notice a door here to a porch, which in turn has another door giving access to the kitchen. Is that the route you followed going into the house?

A. It is.

Q. When you got into the kitchen there were the lights turned on, or did the house remain in darkness?

A. I don't quite understand your question? Do you mean we turned the lights on?

Q. You or Mr. James. Were the lights turned on?

A. The lights were turned on.

Q. I presume that you probably don't distinctly remember whether it was Mr. James that turned them on?

[fol. 76] A. No, I don't.

Q. And after remaining in the kitchen some short interval of time, I presume that you proceeded to some other part of the house, is that right?

A. That is correct.

Q. I notice that the kitchen has two doors, one leading into a hall, and the other going directly into the dining room. Do you remember which route you pursued?

A. I couldn't tell you now, no.

Q. Well, you do remember, don't you, that within a short time after you reached there the lights had been snapped on in various rooms in the house?

A. Yes.

Q. And there had been somebody calling to Mrs. James, somebody had endeavored to attract her attention by the voice, hadn't there?

A. Yes, sir.

Q. By the way, it is your recollection that some one went all through the house before you made any search outside, isn't that true?

A. I think we all eventually went all through the house, but by what route, I couldn't tell you.

Q. Well, I think it is perhaps comparatively unimportant. Did you, yourself, go into the bathroom?

A. No.

Q. Do you know whether your wife did, or not?

[fol. 77] A. I couldn't tell you as to that.

Q. Were you in the bathroom at any later time that evening?

A. No.

Q. After going through the house and calling, and receiving no response, I understand—I don't think I need stand here any longer. Your Honor will pardon me. I didn't mean to stand close to the witness in interrogating him any further than was necessary. After having gone through the house and calling Mrs. James, some conference occurred in regard to making a further search, did there not?

A. That is correct.

Q. Now, without going into anything that might have been said at that conference, did you notice Mr. James' manner and demeanor at that time?

A. Not particularly, no.

Q. After conferring there whatever time you did confer, you got searchlights for the purpose of searching outside, you and Mr. James did, didn't you?

A. Yes.

Q. Two searchlights were all that were used on that occasion, were they?

A. That is right.

Q. Mrs. Pemberton, so far as you know, remained inside while you and Mr. James were searching on the outside, is that true?

[fol. 78] A. That is right.

Q. Now, I am afraid it is going to be necessary for me to stand over there by you again for a few minutes, Mr. Pemberton. I trust it doesn't annoy you. I am going to ask you if you would be kind enough—might I have the pointer, gentlemen? I am going to ask you if you would be kind enough to take a look at the other diagram, I believe People's Exhibit No. 2, that I am showing you now, the one that I first directed your attention to being Exhibit No. 1, I will ask you if you will kindly take the pointer, and be kind enough to point out as nearly as you can the route that you took in searching for Mrs. James.

[fol. 79] A. Well, I couldn't do that because the front yard on the map here is left out.

Q. Very well then, will you just tell the jury as nearly as you can what route you did take in making that search?

A. We both went out the back door, and I went down the driveway, along the east side of the house, towards the

front yard of the house, and went through the front yard. I believe I had only been in the back yard once when I had been out there previously, and so I went out through the front yard and went all through the front yard out there and as I came down around there is shrubbery all around the front yard, around the borders of the property, and I went and looked over the lawn and through the shrubbery there and came up on the west side of the house on the walk that leads to the fish pond.

Q. And then you followed that walk around to the pond?

A. That is correct.

Q. During the time that you were in front of the house did you see Mr. James' flashlight?

A. No.

Q. Do you know where he was during the time that you were making that part of the search?

A. No, I don't.

Q. Do you know where he was at the time that you first saw Mrs. James' body?

A. No, not when I first saw the body, I don't.

[fol. 80] Q. From what direction did he come? He did come to you when you found the body, didn't he?

A. That is correct.

Q. You remained in close proximity to the body until he arrived, didn't you?

A. That is correct.

Q. From what direction did he seem to come when he came there?

A. He came from the north through the gate from the back yard.

Q. Again I will direct your attention to the diagram, People's Exhibit No. 1 and to the space behind the right-hand portion of it designated as the driveway. Is that the driveway that you took in going around to the front of the property?

A. That is correct.

Q. And there is nothing upon either of the two diagrams upon the board that shows the shrubbery that you speak of in the front of the place, is there?

A. No.

Q. That shrubbery, however, as I understand, was planted some of it, along the foundation of the house, what we call the foundation planting, and the rest along the

borders of the property line so as to leave the lawn clear, is that the way it was planted?

A. There was some shrubbery in the lawn, small trees there.

[fol. 81] Q. Now, when you went around to the fish pond after you had covered the entire front of the property and took the little walk which is designated on Exhibit No. 2 as leading from the left, which I understand to be the west side of the house to the fish pond, is that correct?

A. That is correct.

Q. Now, there is a driveway on the property immediately to the east of the house, is there not? Do you remember that?

A. East?

Q. I think my question maybe is a little confusing. There is a house on the property east of the one where Mr. James is living, isn't there? There is not a vacant lot?

A. No, there is a house next door.

Q. There is a driveway leading into the premises there, isn't there?

A. Well, I couldn't tell you where it is.

Q. Isn't that driveway near the westerly boundary of that property?

A. I couldn't tell you as to that.

Q. Very well. Now, I refer again to Plaintiff's Exhibit No. 1. You had never been around the portion of the property north or back of the house but once before this particular night, had you?

A. Well, I went up in the back yard. I had been around the——

Q. The fish pond?

A. Yes, the north and the west of the house, but I had [fol. 82] only been out in the back yard, I believe, once.

Q. Now, taking People's Exhibit 2, I note that farther in the rear of the house there is a garage. Had you been as far as the garage on a number of occasions?

A. Yes.

Q. Now, I will ask you if it is not true that there are no trees or other obstacles to shut off the view of the fish pond from the property adjoining this on the east after you get past the house itself? Is that question quite clear to you?

A. Why yes, there is some shrubbery that grows along the borderline of the property, where it is designated on

your plan there, the shrubbery that goes between the house and the house next there.

Q. You mean the shrubbery intervening between the garage and the street on this property?

A. No, it is in between this house, 1329 and the first next house there, whatever it may be, to the east.

Q. But if we were to draw a line along the north edge of the house, there is no shrubbery or anything else north of that line to intercept the view of a person standing on the adjacent property, is there?

A. I believe there would be. I couldn't say definitely, but if my memory is correct, I believe there is.

Q. Now, still dwelling upon Exhibit No. 2, I direct your attention to a house designated on that exhibit other than [fol. 83] the house at 1329 Verdugo Road.

You are aware of the existence of a house at that place, are you not?

A. No, I was not.

Q. You have no knowledge, then, as to how the windows of that house were arranged?

A. Well, yes—

Q. Or how a person could see from that?

A. No.

Q. Well, at any rate, you do know that there was a chicken house somewhere near the north end of this property where Mr. James was living?

A. Yes.

Q. And you do know they kept chickens there up to the time of Mrs. James' death, do you not?

A. Yes.

Q. Now, I want to take up these photographs for a moment. By the way, did you have occasion to be around that fish pond quite a considerable number of times before her death?

[fol. 84] A. No, I think I was only out there once or twice.

Q. You never did pay any very close attention to the shrubbery and other objects in the rear of the house, did you?

A. No. I can't say that I did.

Q. Now, I want to show you for a moment Exhibit No. 7, and it will be necessary for me to stand by you. I will put the stick down. I want to direct your attention to the upper right-hand corner of the photograph. What you see there

— you remember is the foliage of quite a large tree, isn't that true?

A. Yes.

Q. Now, that tree stands quite a little distance from the pond, does it not?

A. Well, I couldn't answer as to that, either.

Q. Well, you wouldn't be able to say that there is any tree there closer to the pond than the rear wall of this room, of this room where we are now?

A. I wouldn't say, because I am not positive of that.

Q. Now, I want to direct your attention to the photograph marked People's Exhibit No. 8, particularly to the portion of it which lies in the upper right-hand corner of it. You do remember that the shrubs that were planted there were of low growth, don't you, like century plants, and things up to 2 or 3 feet high?

A. Yes.

Q. Now, I notice somewhere straight at the extreme— [fol. 85] something that looks like an awning. It looks to me like an awning. Did you see an awning there?

A. No, I did not.

Q. Your best recollection is that there was no awning there at the time you were there that evening, is that correct?

A. Yes, sir.

Q. Now, there seems to be a corner of a building on which what I have described as an awning is fastened. Do you know what building is in conformity to that point?

A. What do you mean? What part of the house is that?

Q. Yes, what part of the house?

A. This part here?

Q. Yes.

A. That is the back bedroom.

Q. Now, that is the bedroom designated as lying immediately north of the living room on People's Exhibit No. 1, is it not?

A. No, but—

Q. Well, the bedroom here, the extreme northern one?

A. That is correct.

Q. Have you, yourself, ever been in that bedroom?

A. Yes.

Q. That bedroom had two windows on the western side, hadn't it?

A. I couldn't say as to that. I know that there is a window, or two windows; I couldn't say how many for sure.

[fol. 86] Q. You can stand in the bedroom and look through the windows of that place, right to the place where you saw the body of Mrs. James, couldn't you?

A. That is correct.

Q. Have you ever been in the other bedroom that I spoke of first?

A. Yes.

Q. And the same thing is true there: you could stand in that bedroom and look right across to where you saw Mrs. James' body, couldn't you?

A. Yes, that is correct.

Q. Now, you cannot—before I leave this subject altogether—you cannot take these three photographs, or any of them, and say that the shrubbery is not shown there to be a great deal higher than it was in August, can you?

A. I couldn't say as to that, because I am not—

Q. Well, you never did pay any individual attention to the height of the shrubbery, enough to know that?

A. No.

Q. Have you been upon the property in the last two or three weeks?

A. No.

Q. Now, coming back to the events of that particular evening, you were using the flash at the time you found Mrs. James' body?

A. That is correct.

[fol. 87] Q. That furnished the only light which you had there on that day, that is, the only artificial light?

A. That is right.

Q. And by that time, except where there was artificial light, it had grown to be quite dark, hadn't it?

A. It had.

Q. What kind of a flashlight were you using, Mr. Pemberton?

A. I couldn't tell you.

Q. Well, did it give what you would call a pretty strong light, or not?

A. Well, it was not extra good, no.

Q. You wouldn't say it was as strong as we get from a 30-watt bulb, would you?

A. No.

Q. Even with that light you had a little difficulty in seeing what the position of her body was at first, did you not?

A. Well, I--it was just by chance that I saw the body. My light was turned across the fish pond on to the other side, and I pretty near stepped on the body before I saw it.

Q. When you first saw the body it was only a matter of four, or say three feet from you, is that right?

A. It was closer than that.

Q. It was closer than that?

A. It was right under my feet.

[fol. 88] Q. Right under your feet?

A. Yes, sir.

Q. Now, did you do anything with reference to her body as soon as you saw it?

A. No.

Q. The first thing you did was to call Mr. James, was it?

A. No, I made an exclamation of some kind before that.

Q. That was an exclamation by reason of the finding of the body?

A. Yes.

Q. And that exclamation was made before you had time to think?

A. Yes, sir.

Q. And then as you thought, you began calling Mr. James?

A. That is right?

Q. And did any considerable time elapse before Mr. James came, or was he there almost immediately?

A. Well, it was a very short interval of time. I couldn't say as to the time; it was a very, very short interval of time.

Q. That is all I expected you to remember, that it wasn't long enough to cause you to wonder what was detaining him, or anything of that sort.

A. No.

Q. And when he came up did he have his flashlight in his hand?

[fol. 89] A. That is right.

Q. And when he came up, do you remember the first thing that was said between you, whether you spoke to him, or he spoke to you?

A. I spoke to him.

Q. What did you say to him?

A. I told him to brace up.

Q. What was his manner at that time?

A. Well, I told him—at that time I told him that Mary was dead. I told him that Mrs. James was dead.

Q. When you told him that, how did he take it?

A. Well, it was considerable of a shock to him.

Q. How did he act?

A. Well, I am not——

Q. I know it is a little hard to describe. Just think a minute, and see if you can't tell us.

A. Well, I wouldn't be qualified to answer that, because I don't know. It appeared to me that he was very shocked.

Q. Did he seem to tremble?

A. Well, it is——

Q. You couldn't go into detail any more than you have?

A. No, I couldn't go into detail.

Q. Well, after showing him the body, did you and he do anything with relation to the body, or did you go away and leave it as you found it?

A. Well, he knelt down beside the body; Mr. James knelt [fol. 90] down beside the body, and he was talking to her, talking to the body. I don't know just what was said.

Q. Was he crying then?

A. Well, I couldn't say as to that. I was nervous and excited, myself. I didn't realize at the time what was happening.

Q. Do you remember any of the things that he said to her?

A. No, I don't.

Q. He told her how much he loved her, did he not?

A. I wouldn't say to that, because I don't know.

Q. If I were to ask a number of questions that might be suggestive in the hope of refreshing your memory, you feel that your memory could not be refreshed, is that right?

A. My memory was pretty poor right then. My attention was pretty fixed right then; I couldn't remember that.

Q. Did Mrs. Pemberton come out and join you, or did you go to where she was?

A. No, she came out when Mr. James came out from the garden.

Q. Was she right beside you and Mr. James practically all the time that he was at the pond?

A. Yes, as nearly as I can remember she stood at the

northern end of the pond where the walk goes around the back of the house.

Q. Well, at any rate, the three of you, after some in-[fol. 91] terval of time, left the pond and went into the house together, didn't you?

A. That is right.

Q. Did Mr. James require assistance to get into the house?

A. Yes, he did.

Q. Do you remember anything more about his appearance at that time than when the fact of the body being there was first made known to him?

A. If I understand your question—

Q. That is the time he was going into the house?

A. Will you restate that?

Q. Let me withdraw it and ask it again: At the time that Mr. James was going into the house, did you notice his manner or appearance then?

A. Well, after a manner I did, yes.

Q. Just tell us as much as you can describe of it.

A. Well, he was very much broken up. I believe he was crying at the time.

Q. You had hold of him, didn't you?

A. Yes, I had hold of him on one side.

Q. You had hold of his arm?

A. Yes.

Q. His knees seemed to give way beneath him, didn't they?

A. Well, he was very weak, yes.

Q. His arm trembled, didn't it?

[fol. 92] A. I couldn't say as to that.

Q. Tears were rolling down his cheeks, weren't they?

A. As nearly as I can remember, I think they were.

Q. He was making incoherent exclamations, wasn't he?

A. I can't remember as to that; I wouldn't say.

Q. Very well. Now, Mr. Pemberton, you testified at the Coroner's inquest on the body of Mrs. James, didn't you?

A. Yes.

Q. And you recollect that your testimony upon that occasion was given the very next day, wasn't it?

A. No.

Q. Or within a day or two, anyway?

A. No, it was—I don't know how long it was.

Q. I am in error. My associates called attention to the fact that the inquest was held about the 15th of August. Is that your recollection?

A. Yes, sir.

Q. At any rate, at that time your memory as to some of these details was fresher than it is now, wasn't it?

A. Yes, it must have been.

Q. And if I were to show you your transcript of the testimony given at that time, it might be of some assistance in refreshing your recollection, might it not?

A. It might help, yes.

Q. It might help you?

A. Yes.

[fol. 93] Mr. Clark: There is no question but that this is the transcript, is there gentlemen?

Mr. Barnes: No question.

By Mr. Clark:

Q. Now, I am going to ask you if you will be kind enough to read a portion of this transcript, on page 9, from line 22 to and including line 28, and let me know when you have done so.

[fol. 94] A. This is incorrect in a sense.

Q. Well, just tell me—we won't attempt to correct it, since it is not going to be used as evidence here now, but just tell me since you have looked at it, whether that does or does not refresh your recollection as to any of the circumstances of Mr. James' appearance, manner and conduct that evening? Just answer that "ye" or "no".

A. No.

Q. It does not?

A. No.

Q. And now after getting in the house, didn't Mr. James seem to be so weak that he appeared to be unable to stand?

A. No, he was sick and nauseated.

Q. He was nauseated before he got into the house, wasn't he?

A. Well, it was after he got into the house that I noticed more. But I didn't take much notice of it before.

Q. While I am on the subject I may as well bring it up I think. You saw him every day for quite a number of days after that, didn't you?

A. Yes, I—

Mr. Williams: That is objected to——

The Court: It is preliminary, Mr. Williams. I will permit the question.

A. I couldn't state definitely how many days.

By Mr. Clark:

Q. But for quite a few days you were with him every [fol. 95] day, isn't that correct?

Mr. Williams: Objected to as not proper cross examination.

The Court: You may answer that "yes" or "no".

A. Well, I don't quite understand the——

Mr. Clark: Let me get at it this way.

The Court: About how frequently did you see him, say during the two weeks immediately following the 5th day of August?

Mr. Clark: If your Honor will permit me to reframe the question now with the information I have.

Q. You saw him every day from that Monday until and including the Saturday following, didn't you, Mr. Pemberton?

A. No.

Q. How many times, according to your recollection did you see him that week?

A. Well, I wouldn't like to answer that definitely. It might have been—without checking back on it, I wouldn't know.

Q. Well, whatever number of times it was, you do remember that you saw him crying all during that week, don't you?

Mr. Williams: That is objected to as not proper cross examination and immaterial.

The Court: Objection sustained.

By Mr. Clark:

Q. Now, you saw no sign of illness on the part of Mr. James that evening until after the body was found, did you? [fol. 96] A. That is correct.

Q. There was a very great change in Mr. James, both in his manner and his appearance that took place as soon as the body was found, isn't that correct?

A. That is right.

Q. And that changed manner and appearance you observed at various future times during the week, didn't you?

Mr. Williams: That is objected to——

The Court: Objection sustained.

Mr. Clark: I think I understand your Honor's ruling now and I will not transgress.

The Court: It is the same as the prior ruling.

Mr. Clark: Yes, your Honor. I have a case in 145 California that I thought was in point. I just wanted to be sure that I understood the scope of your Honor's ruling.

Q. Now, directing your attention—You showed this Exhibit No. 4 to the witness, didn't you, Mr. Williams?

Mr. Williams: No, I didn't. I won't object on the ground that it is not proper cross examination, however, if you want to show it to him.

Mr. Clark: Well, I don't think it would be objectionable in either event, but I will get at it in a different way in one instance than I would in the other.

Q. After you got into the house, Mr. Pemberton, what, if anything, was done toward notifying the authorities?

A. Well, as soon as I had Mr. James in the house I went [fol. 97] out and got into his car and went after them.

Q. He was left in the house with your wife at the time?

A. Yes.

Q. By the way, you used his car, I believe?

A. That is correct.

Q. That is the same car that you drove up to the house in or rode up to the house in?

A. That is correct.

Q. That was a 1935 Plymouth, was it not?

A. That is right.

Q. And you were away about how long on that occasion?

A. Well, I wouldn't want to answer that definitely, because I don't know.

Q. Well, would you say it was a matter of minutes or hours?

A. Well, I should not imagine it would be over 40 minutes; I couldn't say definitely.

Q. You think 40 minutes would be a pretty fair estimate? Understand, I am not trying to tie you down exactly.

The Court: Just your best judgment.

A. Well, I would be a poor judge of time in a case like that. It would be between 20 and 40 minutes though.

By Mr. Clark:

Q. In what part of the house was Mr. James when you left?

A. He was on the front porch.

Q. And when you got back where was he?

[fol. 98] A. He was in the same position.

Q. When you left him on the front porch was he sitting or lying or standing?

A. He was lying down in the swing there on the front porch.

Q. When you say he was in the same position when you returned, you mean he was still lying in the swing?

A. Yes, he was still lying in the swing.

Q. And now, a note, or letter, designated People's Exhibit No. 4 has been introduced in evidence here. I hand it to you and ask you whether or not you recognize it as any thing which you saw that evening.

A. I did.

Q. About what time of the evening was it, that is, was it before or after you went to the authorities that this letter first came to your attention?

A. I believe it was after.

Q. And what were the circumstances that called it to your attention?

A. Well, I couldn't state as to that.

Q. Where was it when you first saw it as near as you can remember?

A. It was on the table in the dining room.

Q. Do you remember who else was present when you first noticed it?

A. There was a deputy sheriff from Montrose.
[fol. 99] Q. Hutchison or Gillian?

A. No, neither one of them had gotten there yet. It was a deputy sheriff from Montrose, from the Sheriff's office.

Q. Did any conversation occur between him and Mr. James or in Mr. James's presence in regard to this?

A. I don't believe so. I think Mr. James was in the porch yet, if I remember rightly.

Q. Now, when before this had you last seen Mrs. James?

A. It would be on the Wednesday night before August 5th; I don't know the date.

Q. How long, by the way, did you know Mrs. James—oh, I believe you stated that, pardon me. During the period of your acquaintance, you saw Mrs. James quite often, I suppose?

A. Yes.

Q. When you last saw Mrs. James before her death, did she appear to be in her usual state of health or not?

Mr. Williams: That is objected to——

The Court: Objection sustained.

By Mr. Clark:

Q. Now, did she appear to be well——

Mr. Williams: That is objected to——

The Court: The same ruling; it is not cross examination. That is the basis for the ruling. There wasn't anything with reference to the appearance.

Mr. Clark: I think your Honor is right. I am glad to know the basis of your Honor's ruling. I had another point in mind. I do not think it is cross examination as your [fol. 100] Honor has pointed out. Thank you. I am through about that.

The Court: The Court is sufficiently sure to stick to his ruling.

Mr. Clark: Yes, your Honor. And your Honor is in charge of the law in this case.

The Court: As far as this court is concerned.

By Mr. Clark:

Q. During the time, the period of your acquaintance, you frequently saw Mr. and Mrs. James together, didn't you?

A. Yes.

Q. And they always acted in an affectionate manner towards each other?

A. They always seemed very happy and affectionate.

[fol. 101] JOHN P. TOOHEY, called as a witness on behalf of the People, being first duly sworn, testified as follows:

The Clerk: State your name, please.

The Witness: John P. Toohey.

Direct examination.

By Mr. Williams:

Q. What is your occupation, Mr. Toohey?

A. Deputy Sheriff, Los Angeles County.

Q. For how long have you been a deputy sheriff?

A. Nine years.

Q. On the 5th of August, 1935, where were you stationed?

A. The Montrose branch of the Sheriff's office.

Q. And on that particular day were you on duty at night or in the daytime?

A. At 4:00 to midnight.

Q. Did you receive a call to go to 1329 West Verdugo Road?

A. I received a call to come to the station and accompanied Mr. Pemberton to that address.

[fol. 102] Q. Did you do so?

A. Yes, sir.

Q. What time did you arrive at the premises, 1329 West Verdugo?

A. 8:30 P. M.

Q. With whom did you go?

A. Deputy Sheriff Jones and Mr. Pemberton.

Q. When you got to 1329 West Verdugo Road, just tell us what you saw and did.

A. Mr. Pemberton took me around the back of the house to the fish pond and found the body lying on its back with the curb there at the walk there, about a two foot walk, and there is a slight walk next to the water, and her back just about resting on the curb, and her head was in the water, and her dress or pajamas were up past her knee. I noticed that the left leg was swelled and very blue, and the ants were walking all over the body.

Mr. Clark: What was that?

A. The ants were walking over the body.

Q. Was she alive or dead at that time?

A. She was dead.

[fol. 103] By Mr. Williams:

Q. Mr. Toohey, what, if anything, did you do with the body there?

A. I didn't touch the body.

Q. You didn't touch it at all?

A. No, sir.

Q. Where did you go after you observed the body?

A. I went back to the radio car and told my partner to go down and call the Homicide Detail and he did call the Homicide Detail.

Q. Did you do anything at the premises at the house there?

A. I went up to the porch and I found Mr. James sitting on the porch with Mrs. Lueck, who is now Mrs. Pemberton, [fol. 104] sitting on the arm of the swing with his arm around her shoulders. He appeared to be suffering from shock and I questioned him about when he had seen his wife last and her condition.

Mr. Williams: Now, Mr. Toohey, have you—May I have those exhibits?

Mr. Clark: Surely. (Handing to counsel.)

By Mr. Williams:

Q. I show you People's Exhibit 4 for identification, and ask you whether you saw that exhibit on that particular occasion?

A. Yes, I did.

Q. Just state when and where you saw it.

A. I went in the house with Mrs. Lueck to look for a note Mr. James said he had found, and Mrs. Lueck found this on the table and I told her to go ahead and open it. She opened it and read the contents. We asked Mr. James—

Mr. Clark: Just a moment. I will object to any statements made by Mr. James at that time upon the ground that no foundation has been laid for the reception of such evidence in that the corpus delicti has not been established and it is incompetent.

The Court: The objection is overruled. It appears to be in the best interest of the trial to conduct it in sequence, chronologically, and for that reason, the objection is overruled.

Mr. Williams: May I have the question and the answer as far as we have gone?

[fol. 105] The Court: Then, you can continue it.

(Record read by the reporter.)

A. I asked Mr. James who it was addressed to and he said it was her sister in Las Vegas, Nevada. Mrs. Lueck at that time said, "Where is the other note?" James said he didn't know where it was and he fished around as he sat up in the swing, fished around in his pockets, and after he sat up to look to see if he could find it in his hip pocket.

[fol. 106] Q. And did he produce any other note at that time?

A. Yes, sir.

Q. I show you People's Exhibit No. 3 for identification and ask you if you have seen that before?

A. Yes, sir.

Q. When and where did you see that?

A. Mr. James handed it to me after he had taken it out of his pocket.

Q. Is that the note he took from his pocket when Mrs. Lueck asked him where the exhibit was?

A. Yes.

Mr. Clark: What was the number?

Mr. Williams: 3.

The Court: 3.

By Mr. Williams:

Q. Did Mr. James say anything on the subject of who had written the note?

Mr. Clark: The same objection.

The Court: The same objection and the same ruling.

Mr. Williams: You may answer.

A. Mr. James was acting so hysterically——

The Court: Now, just a minute. Read the question again. Answer the question.

(Question read by the reporter.)

A. No, he did not.

By Mr. Williams:

Q. Now, did you observe at the fish pond whether there was any fence around the fish pond?

[fol. 107] A. Yes, sir.

Q. And did you observe anything about that fence particularly?

A. The fence near the body was lying all thrown in the water for about, I would say, eight or ten feet.

Q. And except for that eight or ten feet, what was the condition of the fence?

A. Around the curb, the outer edge of the fish pond.

Q. Will you describe the type of fence it was?

A. What I call a chicken wire fence.

Q. And about what height was it?

A. About two and a half to three feet.

Q. Now, I will direct your attention to People's Exhibit 10, which is just to my left and back of me, and ask you if what appears to be the type of material of which that fence was composed?

A. Similar to that, yes, sir.

Q. And did you on that night, or immediately subsequent to that time, examine around the fish pond?

A. The next day.

Q. That examination was made in the daytime, was it?

A. Yes, sir.

Q. Now, I will show you People's Exhibits 7, 8 and 9. They are in order, 7, 8 and 9, and ask you whether or not you recognize those pictures as being pictures of the fish pond, and shrubbery, and other material in the neighborhood of the fish pond as they appeared at that time?

A. Yes, sir.

Q. Did you make an examination at that time to determine the depth of the water in the pool?

A. Yes, sir.

Q. How deep was it?

A. 14 inches at the spot where the body was found.

Q. And did you observe what the character of the bottom of the pool was?

A. It was very spongy. We prodded with a stick, and found that it would give several inches, just like a sponge.

Q. Were there any rocks, or hard substances in the bottom of the pool, at or near the point where the body was found?

A. Not anyplace where we had placed the stick.

Q. Now, in examining these pictures, Peoples Exhibits Nos. 7, 8 and 9, would you say that the shrubbery, as it ap-

pears on these exhibits, is in substantially the same condition that it was at the time that you examined this pond, on the day following the 5th of August, 1935?

A. I would not say. There was a lot of shrubbery there, but I wouldn't say that it was exactly the same.

Q. Did you observe with reference to the pond, as to whether it appeared to be secluded, or not, from the surrounding country?

Mr. Clark: Just one moment.

The Court: It calls for a conclusion. He may describe [fol. 109] the surrounding conditions, or any tests, or observations that he made, but as to whether or not it appeared to be secluded is a conclusion.

By Mr. Williams:

Q. Now, just describe as well as you can, Mr. Toohey, the height and character of the trees and shrubbery, and so forth, about the pond?

A. My recollection is that the pond was pretty well surrounded with shrubbery. Going out toward the front there were some stepping stones, as I recall it, and you had to kind of duck down to get under some of the brush where it lapped together over the walk.

Q. Was that true all around the pond?

A. I didn't pay particular attention to the back, whether you could see through the yard, or not.

Mr. Williams: You may cross examine.

Cross-examination.

By Mr. Clark:

Q. Mr. Toohey, I assure you the cross examination will be very brief, but taking these photographs, I am going to refer for a moment to Exhibit No. 7. In the upper right-hand corner here, what you see is the foliage of the tree, isn't it?

A. That is what it appears like.

Q. You were there upon the ground; you know, don't you?

A. Yes, sir.

[fol. 110] Q. And that tree was some 20 or 30 feet away from the pond, wasn't it?

A. Possibly that.

Q. Now, if one had set his camera up on the side of the picture where you see the shrubbery, so that the lens would be pointing in the opposite direction, it would have brought no shrubbery into view, would it?

Mr. Williams: Objected to as calling for a conclusion.

Mr. Clark: I will reframe it another way. Take the portion of the property on the side of the picture showing in the foreground, there was no shrubbery there at all, was there?

A. I am not sure.

Q. Now, you went back to the place, as I understand it, the next day in broad daylight, and made observations there, is that correct?

A. As to the depth of the pond, and the surface under the water.

Q. Well, did you make any observations, go anyplace to see whether an unobstructed view of the pond could be had from different points, or did you just ignore that?

A. No, sir, I didn't.

Q. I believe that concludes that branch of the interrogation. Now, when you first saw the body, did the water entirely cover the head?

A. No, sir.

[fol. 111] Q. Was the head entirely submerged?

A. No, sir.

Q. The face was not under water at all?

A. No, sir.

Q. As I understood your testimony upon direct examination—correct me if I am wrong—when you saw the body she was lying on her back with the face turned up toward the sky, is that correct?

A. Correct.

Q. And what was the position of the arms when you first saw her?

A. My recollection is that her left arm was held up near her breast, and the impression of this chicken wire was on the arm, showing that that arm had laid there for a considerable time, I would think. The right hand was hanging down alongside of her body.

Q. As I understand it, the left arm was bent, and the right arm was hanging down?

A. That is my recollection, yes, sir.

Q. By the way, did you make any written memorandum, or report then, or about that time?

A. No, sir.

Q. And the wire of the pond, did you notice whether the wire, itself, had any broken ends?

A. As I recall, it was not. On both sides it was still holding, and just about eight or ten feet of the wire was in [fol. 112] the pool.

Q. The wire was fastened to some posts, or uprights, I take it?

A. Yes, sir.

Q. And that fastening was made with staples, wasn't it?

A. I imagine so. I didn't notice.

Q. And you didn't notice any place where it had been pulled loose from the posts, did you?

A. No, sir.

Q. With reference to Mr. James, you had never seen him before that time, had you?

A. No, sir.

Q. And he appeared to you to be grief-stricken all the time that you were there, did he not?

A. That was the appearance, yes, sir.

Q. That concludes, I believe, the second line of interrogation. I have just about that many more questions. In regard to this note, Exhibit No. 3, the note written on the little piece of wrapping paper, Mr. James never denied having the note, did he?

A. No, sir.

Q. And he searched in his pockets, fumbled in his pockets for it, didn't he?

A. Yes, sir.

Q. He appeared to be very nervous at that time, didn't he?

A. He did.

[fol. 113] Q. But he, himself, found the note in his pocket, didn't he?

A. He took papers out, and I looked through them with him.

Q. So that as he produced the papers, you and he looked at them, and you found the note amongst them?

A. Yes, sir.

Q. Now, the note that Mrs. Pemberton mentioned is this same note that we have been talking about, People's Exhibit No. 3?

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Mr. Clark: As I get the facts, Mr. Toohey, Mrs. Pemberton made some mention of a note that had been found by Mr. James that evening, is that correct?

A. Yes, sir.

Q. She referred to it as being Ethel's note, didn't she?

A. She didn't refer to any one particular note.

Q. Just what did she say in regard to it, as near as you [fol. 114] can remember?

A. She said that Mr. James had found a note.

Q. And then you asked him where it was?

A. I asked him where it was.

Q. And she said Mr. James had it?

A. She thought he had it.

Q. And then after what we have already been discussing Mr. James produced the note which I now hand you, and which is marked People's Exhibit No. 3 here, is that correct?

A. That is it.

Mr. Clark: I think that is all.

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[fols. 115-118] A. L. HUTCHISON, called as a witness in behalf of the People, being first duly sworn, testified as follows:

Direct examination.

By Mr. Williams:

Q. Mr. Hutchison, what is your occupation?

A. Deputy Sheriff of Los Angeles County.

Q. Attached to what detail?

A. The Bureau of Investigation.

Q. And how long have you been a Deputy Sheriff attached thereto.

A. I have been there since December 1st, 1926.

Q. Were you on duty on the evening of August 5th, 1935?

A. I was.

Q. In the Bureau of Investigation?

A. I was.

Q. And did you on that night answer a call to the premises at 1329 Verdugo Boulevard, in La Canada?

A. I did.

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[fol. 119] Q. And how far from the immediate edge of the pond was the body resting?

A. Well, the body was resting right on the pond, and she was laying upon her back, and I should say the shoulders were lying upon the cement on the edge of the pond, and the head was hanging back kind of, and the hair was hanging down, and she was touching the water.

Q. Was there some chicken wire there?

A. Yes, there was some chicken wire, and the body was laying upon it.

Q. Did you observe the body at that time, to observe whether there was any cuts, or marks upon it?

A. I made a preliminary examination of her, yes.

Q. You had a flashlight, did you?

A. Yes.

Q. You had driven out there, but you had the aid of a flashlight?

A. Yes.

Q. And did you observe whether or not there was a cut on her foot?

A. Well, I noticed a cut on her left toe, her big toe on [fol. 120] the left foot.

Q. You noticed a cut on the big toe of the left foot?

A. Yes, sir.

Q. Are you certain about that?

A. Yes, I think that is where it was.

Q. Yes. Did you observe where this cut was, with reference to the toe, the top or the bottom?

A. No, I don't remember that.

Q. And did you observe anything else, any cuts or bruises about her body?

A. Yes, her left leg—the flesh was very dark, you might say, and it was almost black between the ankle and the knee, very black.

Q. A black and blue mark between the ankle and the knee?

A. Yes, very much so.

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Q. Now, did you observe whether or not she was attired in a dress, or pajamas?

[fols. 121-134] A. Yes, she—at that time I couldn't tell whether it was pajamas, or a house dress, but it was pulled up above her knees, and she had a pair of house slippers

on, old house slippers. She just had a strap across the toe, more of a sandal.

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[fol. 135] CHARLES H. HOPE, called as a witness in behalf of the People, being first duly sworn, testified as follows:

The Clerk: State your name, please.

The Witness: Charles H. Hope.

Direct examination.

By Mr. Williams:

Q. Mr. Hope, you are, at the present time, confined in the County Jail of Los Angeles County, are you?

A. Yes, sir.

Q. And you have been indicted for the murder of Mary Emma James?

A. Yes, sir.

Q. To which indictment you did, a few days ago, plead guilty in this court?

A. Yes, sir.

Q. You are now waiting for your sentence to be fixed by the Court?

A. Yes, sir.

Q. Do you know the defendant, Robert James?

A. I do.

Q. How long have you known him?

A. For a period of about seven years.

[fol. 136] Q. And when and where did you first meet him?

A. At the Trinity Barber Shop on Grand Avenue. I was a customer of the barber shop.

Q. Had you seen him from time to time, from that time up until the 5th of August and thereafter, of 1935?

A. Yes, sir.

Q. And during the month of June, 1935, did you meet the defendant, James?

A. I did.

Q. Where did you meet him?

A. At the barber shop.

Q. Where was the barber shop?

A. It was on 8th Street between Grand Avenue and Olive Street.

Q. In the City of Los Angeles?

A. Yes, sir.

Q. And did you at that time have a conversation with Mr. James?

A. I did.

Q. What did he say to you and what did you say to him?

Mr. Clark: Just one moment. That is objected to on the ground that no proper foundation has been laid and it is an attempt to prove the oral statement or declarations of the defendant before the corpus delicti has been proved, and for the purpose of establishing the corpus delicti, and such evidence is incompetent.

[fol. 137] The Court: The objection will be overruled. He may answer.

Mr. Williams: Will you read the question, Mr. O'Brien, please?

(Question read by the reporter.)

Mr. Clark: I wish to make the further objection because I think I know what the witness's testimony will be, that the testimony, the conversation, is irrelevant to all of the issues of this cause.

The Court: The objection will be overruled.

A. He asked me if I know anything about rattlesnakes. I told him "No." He asked me if I could find out. I told him I would try to.

Mr. Clark: I now move to strike the testimony of this conversation out upon the ground that the evidence is incompetent, irrelevant and immaterial.

The Court: Motion denied.

Mr. Williams: Was there anything further said?

A. Yes, sir.

Q. Just relate the entire conversation.

Mr. Clark: The same objection, your Honor.

The Court: Overruled. You may answer.

A. He went outside of his barber shop and said he had a friend who had a wife, that had been annoying him quite a bit, and he was going to kill her and wanted to get some rattlesnakes, and laughed about it. I believed he

meant it was none of my business what he wanted them [fol 138] for. He said, "If you will get me some rattlesnakes, I will give you \$100.00".

Mr. Clark: I now move to strike the testimony out on the ground it is incompetent, irrelevant and immaterial.

The Court: Motion denied.

By Mr. Williams:

Q. All right. Go ahead and tell the rest of the conversation.

Mr. Clark: It will be understood, of course, that I am standing upon the objection originally made as to the conversation?

The Court: It will be understood that the original objection to the effect that the testimony is irrelevant and that it is incompetent because the corpus delicti has not yet been proven, be interposed to each question with reference to this conversation and as to each of those objections let the record show that the Court overrules the objection and if motion to strike were made to the matters upon the grounds set forth in the objection, that the motion would be denied. Go ahead.

[fol. 139] A. He stated if I had to go to the desert to get them, he would defray all expenses.

Q. All right. Then did you see him again later?

A. Yes, sir, along towards the last of June, I don't remember the exact date.

Q. Where did you see him?

A. In his barber shop.

Q. And did you then have a conversation with him?

A. He asked me if I found out about rattlesnakes.

Mr. Clark: Just a moment. I move to strike that answer out for the purpose of an objection.

The Court: For the purpose of making the same objection?

Mr. Clark: Yes, your Honor.

The Court: The motion will be denied. Make the objection, however, so that you may preserve your record. It will be presumed that the objection preceded the ruling, and the answer. Objection overruled.

Mr. Williams: May we have the—

The Court: And as to the several questions asked as to the conversation which the witness has fixed as being some time in the last of June, the record may show that Mr. Clark is given the benefit of the objection upon the same ground, and the objection will be the same as to the prior conversation, and the objection is overruled.

Mr. Williams: Will you read the answer as far as it went, Mr. Obrien?

[fol. 140] (Answer read by the reporter.)

Mr. Williams: Just tell the rest of the conversation.

Mr. Clark: To which we object on the grounds heretofore stated, on the same grounds, that the corpus delicti has not been established, and that the evidence is incompetent.

The Court: You have already covered it, but I will rule on it again. The objection is overruled. You can have the benefit of that same objection to any separate question relating to this same conversation, and the Court will make the same ruling.

Mr. Clark: Yes, your Honor.

Mr. Williams: Proceed.

A. I told him I thought I could purchase some rattlesnakes for him.

Q. Was that the extent of the conversation?

A. Yes, sir.

Q. Did you thereafter purchase some rattlesnakes?

A. Yes, sir.

Q. Where did you purchase the rattlesnakes?

Mr. Clark: Just one moment. That is objected to on the ground that it is immaterial and irrelevant.

The Court: It will be overruled.

A. I purchased them in Long Beach, from a gentleman by the name of Mr. Kirby.

Mr. Williams: How many rattlesnakes—

Mr. Clark: Just one moment, Mr. Williams, if you will [fol. 141] oblige me. If your Honor please, we will interpose the objection last stated to every question asked for the purpose of illustrating any statement by this witness with relation to anything he did with regard to the purchasing of rattlesnakes, or any use that he made of them. I make this statement in the interest of economy of time.

I assume that your Honor, upon the ground of irrelevancy, would overrule the objections if they were made, and that there would be no use in me making them to the general line of testimony concerning what this witness did about the rattlesnakes, unless there was some other factor entered into the objection, in which case I will state any additional grounds I may have.

The Court: In the present status the Court holds the objection that it is irrelevant should be overruled, and it is overruled, as within the scope of the issues raised by the pleading and the plea, and within the indication of the District Attorney's opening statement it appears to be relevant.

Mr. Clark: My thought is at this time that there is frequent occasion when it can only be ascertained after evidence has been heard whether it is irrelevant or not, and I am trying to exercise some precaution in so preserving my record, so that at the proper time appropriate motions can be made, if the evidence seems not to be relevant or competent.

The Court: You may proceed.

Mr. Williams: May we have the part of the—
[fol. 142] Mr. Clark: May I then add to the objection the latter objection, that the evidence is incompetent, as well as irrelevant?

The Court: I ruled on the same thing, but I may say that a general objection, incompetent, does not mean very much. You may proceed.

Mr. Williams: May I have the last question and answer read, your Honor? I realize that I should have kept them in mind, but I didn't.

(Record read by the reporter.)

Mr. Clark: Now, if your Honor please, in addition to the grounds heretofore stated, I object to the question upon the further ground that the testimony is incompetent, in that it is an attempt to prove the commission of one offense by proving facts which constitute an entirely different offense.

The Court: The objection will be overruled.

By Mr. Williams:

Q. How many rattlesnakes did you buy from Mr. Kirby?

A. Three.

Q. After buying the rattlesnakes, what did you do with them?

A. I took them to my apartment, and kept them for a couple of days, and delivered them to Mr. James at his home.

Q. And where did you deliver them? At what home?

A. At Mr. James' home in La Canada.

Q. What time of the day or night was it that you delivered [fol. 143] them?

A. I don't remember exactly; I believe it was in the evening.

Q. Was Mr. James there when you delivered them?

A. Yes, sir.

Q. Did you have any conversation with Mr. James, with reference to the snakes that you were delivering, at the time of the delivery?

A. I don't believe so.

The Court: Was anything said at all?

A. No, sir, not that I remember.

The Court: You don't mean that you remained mute and dumb?

A. Well, no, sir.

Mr. Clark: It will be understood, of course, that as to any conversation——

The Court: The same objection may be considered as having been interposed as was interposed to the former conversation between the defendant and this witness upon the same subject matter, and the same ruling.

By Mr. Williams:

Q. Did you pay money for the rattlesnakes that you purchased from Mr. Kirby?

A. Yes, sir.

Q. How much did you pay?

A. \$5.00.

Q. Now, when you delivered the snakes to Mr. James, [fol. 144] did you have any conversation with him?

A. No, sir, I told him——

Mr. Clark: Just a moment. I object to the conversation upon the same grounds that I have been objecting to all of the others.

The Court: Same ruling.

Mr. Williams: Proceed, Mr. Hope.

A. I told him there was the snakes. He said, "All right." He wanted to know where I got them. I told him it didn't make any difference, and went on back to Los Angeles.

Q. Now, either before or after you delivered those snakes to him, did he pay you any money?

A. He paid it to me about the second day I had them.

Q. Was that before or after you delivered them?

A. That was before I delivered them.

Q. How much money did he give you?

A. I think it was \$20.00.

Q. Did you have any conversation with him at that time?

A. I beg pardon?

Q. Did you have any conversation with him at that time?

A. When he gave me the money?

Q. Yes.

A. I told him I had the snakes, and I had been to considerable expense to get them, running around over the country, taking up my time, and he hadn't at this time paid me the \$100.00 that he agreed to, and he gave me \$20.00 for [fol. 145] these snakes.

Q. Now, subsequent to delivering the snakes to Mr. James, did you see him again, that is, after you delivered the snakes to Mr. James did you see him again?

A. Yes, I saw him in his shop, and he asked me—I was getting ready to move from downtown out on Santa Monica Boulevard. He wanted to know if I was doing anything. I wasn't at that time. He said, "Well," I could come out and stay at his house for four or five days. He had a little work around there for me to do, which I never did very much, and I went out to his house and stayed there. I think I was there one day by myself, and the remainder of the time I came to town with either Mr. James, or Mr. James and his sister.

Q. Now, can you fix about the date when you went to his house to live?

A. Only in this manner, that I went to live at his house on a Friday, preceding the Monday when Mrs. James went to Long Beach to a convention.

Q. How long did you stay at Mr. James' house?

A. I stayed there until the following—I think it was the following Wednesday.

Q. And during that time did you have any conversation with him?

A. Yes, sir.

Q. Just state what the conversation was.

[fol. 146] Mr. Clark: To which I object on the ground that no foundation has been laid therefor, and that the evidence is incompetent, being the same objection heretofore interposed to the other conversations sought to be elicited.

The Court: The objection will be overruled.

A. He ordered me to go into town with him to go over to a cabinet maker and have two boxes made, the dimensions of which I don't know. There is a bill of sale there for them.

Mr. Parsons: Sometimes the witness drops his voice, and I can't hear him.

The Court: I didn't get the last part of that answer, either. Will you read it, please, Mr. Reporter?

(Answer read by the reporter.)

By Mr. Williams:

Q. Did he say anything with reference to what the boxes were to be used for?

Mr. Clark: That is objected to on the additional ground it is leading and suggestive.

The Court: Overruled.

A. He said to tell the cabinet maker, if he asked any questions about them, that we were going to keep white mice in them. At that time there were two white mice at his house, that I got with the first batch of snakes.

By Mr. Williams:

Q. Did you have the boxes made?

A. Yes, sir.

Q. Where did you have them made?

A. On Western Avenue, about a block or two blocks south [fol. 147] of Melrose.

Q. Do you remember the name of the man who made them for you?

A. No, sir, I don't.

Q. All right, did you pay for the boxes?

A. Yes, sir.

Q. How much did you pay for them?

A. I think they were \$5.00.

Q. Describe the boxes as they appeared after they were completed?

A. Well, they were about this long.

Q. Indicating about two feet long?

A. About two feet long, about nine inches high, and they had a glass top.

Q. Did the top open?

A. Very easily, yes.

Q. Now?

A. It had a sliding top. It was in a groove.

Q. After you got the boxes, what did you do with them?

A. I put them in the car, and I drove back down to Mr. Kirby's. I had the rest of the day to call, and he returned home with me.

Q. After you saw Mr. Kirby, you say he returned home?

A. After I had been to Mr. Kirby's house, yes.

Q. Well, what did you do with the box after that?

A. I left them. I gave them.

[fol. 148] Mr. Clark: I couldn't hear the witness.

The Court: You drop your voice.

A. I had them in the car, and I went and delivered them out to Mr. James' house.

By Mr. Williams:

Q. After you got to the house, what, if anything, did you do with them?

A. I didn't see it, myself. I put the two snakes in the box for delivery to this man.

Q. Did you have any conversation with Mr. James at that time?

A. Yes, I imagine he——

Mr. Clark: Just a moment——

By Mr. Williams:

Q. Now, was anything said on the question of paying for the boxes?

Mr. Clark: Just a moment; that is objected to on the ground that it is leading and suggestive, and it is also

objected to on the ground made to the other conversation, on the ground that no proper foundation has been made, and the statements of the defendant are incompetent, and that the evidence is incompetent.

The Court: The objection is overruled. The Court recognizes the fact that you cannot recognize any part of the corpus delicti. That means——

Mr. Clark: I understand, your Honor. There is one other law that I would like to call to your Honor's attention after the jury leaves, for a brief moment.

[fol. 149] The Court: All right.

A. Shall I go ahead?

By Mr. Williams:

Q. All right.

A. He gave me the money for the box in the morning.

Q. How much money?

A. \$5.00.

Q. At that time did you have any conversation with him?

A. He told me he wanted the boxes, to have a hole out in the side of it. I said, "How big a hole?", and he said, "Put your two fists like that, and draw a circle around it, and cut it out that way."

Q. Now, after you had delivered the boxes to Mr. James, did you have a further conversation with him?

A. Not until I had left there, which was some time later in the middle of—I guess it was about the middle of July.

Q. And where did you have this conversation?

A. In his barber shop.

Q. What did he say to you, and what did you say to him?

Mr. Clark: That is objected to as no proper foundation laid, and the corpus delicti has not been proven.

The Court: The objection is overruled.

A. And he said the man was dissatisfied with the snakes that I had, and that they were not fighters, and that he and his family had been down to Ocean Park and had noticed the snake pit down there, and that they had good snakes there, and in the conversation with gentlemen that were running [fol. 150] the pit, they said that they sold snakes by the pound.

Mr. Silverman: That was a conversation with Mr. James.

The Court: I believe it is.

Mr. Silverman: Otherwise it would be hearsay.

[fol. 151] By Mr. Williams:

Q. Proceed with the conversation you had with Mr. James.

A. When we went to Ocean Park we submitted them and sold them for 70 cents a pound. He asked me if I was busy that afternoon and I told him I was not. So I went down to Ocean Park with him.

Q. When you got down to Ocean Park, where did you go?

A. We went to the snake pit and waited for about an hour. I was asking him questions—I didn't hear a whole lot of it, but I did hear from the man that owned the pit say, "I will bet you \$20.00 there isn't a poisonous snake in the pit." I went around on the other side and he told me to and I didn't want anybody to think we were together.

Mr. Silverman: We are unable to hear what the witness is saying. I have tried to be attentive, your Honor. May I have that last answer read up to that point?

(Answer read by the reporter.)

Mr. Clark: It would be hearsay to go any further.

Mr. Silverman: That is hearsay, and I object to it as incompetent.

A. I heard Mr. James say to the man that owned the pit and he walked over to my seat and he pointed out one snake and said, "That is the one I want", and he left. The following day he sent me down to buy it.

By Mr. Williams:

Q. Well, you say he sent you down to buy it. When he sent you down, did you have a conversation with him?

[fol. 152] A. That was at the snake pit. He said, "I think the man will be satisfied." Now, in this box there was the one live snake and he brought his car down the next day and in this car was one of the sliding top boxes, with one snake in it. He gave me his car and I went to Long Beach. I got this snake—I gave this snake to the man in the pit.

Q. Was this Mr. Kirby of Long Beach?

A. No sir, this was the man at Ocean Park. It was one of the snakes that I got from Mr. Kirby.

Q. Wait a minute. You said you went to Long Beach with this snake. Did you mean Long Beach, or Ocean Park.

A. To Ocean Park, where we went the day before.

Q. And you gave the snake which you had purchased at Long Beach to the man at Ocean Park?

A. Yes, sir. He wasn't there at that time. The next door they had a concession there. They had a doctor there. I waited for this man to show up and he didn't show up there. I said, "We are very hot", and I said, "Wait there while I dump this snake——"

Mr. Parsons: We object to that and ask that it be stricken.

The Court: That may be stricken.

Mr. Parsons: I think that is all hearsay.

The Court: What his conduct was I do not think is hearsay.

Mr. Parsons: What he said?

The Court: The only thing he stated was what he said to the doctor. That is stricken. That is the only conversation that was stated.

[fol. 153] By Mr. Williams:

Q. What did you do?

A. I waited around there and finally the man that owns it came back and pointed out what I thought was the same snake and he put it in a box and I took it down and delivered it to Mr. James' barber shop.

Q. What snake do you mean?

A. The one Mr. James had pointed out the day before.

Q. The one that Mr. James had pointed out the day before?

A. Yes.

Q. And when you delivered that snake to James, did you have any conversation with him?

A. Yes, he paid me for the snake. He went on home and I went my way.

Q. Did you see him thereafter?

A. I used to go in his shop after work. I was working nights and I was working days part of the time and nights part of the time. When I was working I would stop in to get a hair cut at the barber shop.

Q. Did you see him after August 3, 1935?

A. I did.

Q. Where?

A. At his barber shop.

Q. Did you have a conversation with him?

A. I did.

Q. What was the conversation?

Mr. Clark: We object to this conversation on the ground [fol. 154] that the corpus delicti has not been established and it is an attempt to establish the corpus delicti——

The Court: The objection is overruled; you may proceed.

A. He said the snake was no good. He wanted some fighters. But I heard that the gentleman at Ocean Park had snakes that they bought from a fellow named Snake Joe at Pasadena. He said, "Go over and get some if you want real fighters." He said they fought chickens and dogs. However, inquiring around all over the country, I finally got these snakes.

Q. And did you get some snakes there?

A. Yes, sir.

Q. How many?

A. Two.

Q. After you got them, what did you do with them?

A. They were in two boxes, one in a glass box and one in a small box that had like a screen door on top and I put them all in the car and brought them back to Los Angeles and telephoned Mr. James that I had the snakes. He met me out front of the shop.

Q. Did he see you there?

A. He did.

Q. When he met you what did you do?

A. He told me to drive around the block and he would be ready to go. I drove around the block and as I came back, he came out of the shop and got in the car and drove out Vermont Avenue to Slauson.

[fol. 155] Q. Now just a moment; let us go back to your trip out to Snake Joe's.

A. Yes, sir.

Q. Did anybody go with you?

A. Yes, my wife.

Q. And what car did you drive?

A. Mr. James' car.

Q. What kind of a car was that?

A. A Plymouth sedan. I had driven that car on all trips except the first.

Q. Now, when you met Mr. James in front of his barber shop, you were in the Plymouth sedan?

A. Yes, sir.

Q. Where was your wife?

A. At home.

Q. And did Mr. James get in the car?

A. Yes.

Q. Who drove the car?

A. Mr. James. He asked me where I was going and I told him I was going out home. My car was at Beverly and Vermont, and we stopped at a drug store and he handed me \$5.00 for a prescription, and told me to go into the drug store and have the prescription filled and to buy two inches of adhesive tape. I asked the druggist what the prescription was for, but he wouldn't tell me what it was. I took the adhesive tape and the prescription and gave it to Mr. James.

[fol. 156] Q. And then what happened?

A. I started to get out of the car—

Mr. Clark: Just one moment; I object to what he told, upon the grounds that have heretofore been stated.

The Court: The same objection will be noted and the objection overruled.

A. May I have a drink of water?

The Court: Yes.

.

[fol. 157] Q. Mr. Hope, when court adjourned last night you had just stated that on the 3rd of August, 1935, you had delivered some snakes to Mr. James and Mr. James had taken you in his car, that you had stopped and bought some adhesive tape and had a prescription filled and then you had proceeded in the car with Mr. James to a point about Beverly and Western, I believe.

The Court: Beverly and Vermont.

Mr. Williams: Beverly and Vermont.

Q. Did you at that time and place have a conversation with Mr. James?

A. Between the drug store and the place where he let me out, yes sir.

Q. What was the conversation?

[fol. 158] Mr. Clark: The same objection is being reserved, your Honor as to these other matters upon the assumption it will not be necessary for me to object.

The Court: The same ruling.

Mr. Williams: You may answer.

A. There was no third party. He told me his wife had \$5,000.00 worth of insurance and he was going to collect it.

Q. Well, tell us the conversation.

A. That was all of it that I remember right at the time.

Q. Did he say anything about your connections with it—

Mr. Clark: That is objected to as leading and suggestive, your Honor.

The Court: Overruled.

A. Not that particular time, I don't believe.

By Mr. Williams:

Q. Well, after that conversation, what did you do?

A. I went out in my car over to my wife's apartment and got her *and got her* and had dinner and went to a show.

Q. All right; when did you next see Mr. James?

A. I went after my wife by 10 o'clock in the morning.

Mr. Parsons: What was the answer?

(Answer read by the reporter.)

By Mr. Williams:

Q. Well, did you get your wife?

A. Yes, sir.

Q. And did you go any place with your wife?

A. I drove to La Canada and asked her to wait on the [fol. 159] corner, so I had a chance to go up in Mr. James' house and get the snakes back.

Mr. Parsons: May we ask that that be stricken out?

The Court: Yes, that last remark may be stricken out.

By Mr. Williams:

Q. Well, you left your car at the James residence?

A. I did.

Q. Did you go to the James residence?

A. I did.

Q. About what time did you arrive at the James residence?

A. Oh, I would say it was in the neighborhood of 12:30 or quarter of 1:00.

Q. Did you meet any parties there?

A. I walked up and Mr. James came out.

Q. Did you have a conversation?

A. I did.

Q. Tell us what conversation you had.

A. He came out and he had been drinking a little bit and I told him that I——

Q. Speak louder; we cannot hear you.

Mr. Clark: No, we cannot hear you. May we have the reporter read that, your Honor?

The Court: Yes.

(Record read by the reporter.)

A. He said I would not have them right then.

By Mr. Williams:

Q. Do you mean that James said you couldn't have them [fol. 160] right then?

A. Yes, sir.

Q. All right, give the rest of the conversation.

A. I talked to him for a little while, had a couple or three drinks with him in the garage. The snakes were in boxes in the garage, alongside of the boxes were three or four dead chickens. I went back after talking to him and told my wife not to wait for me, that I couldn't get the snakes then, that I would——

Mr. Parsons: Move to strike out what he told his wife.

The Court: Motion granted. Stricken out. The jury is admonished to disregard the same.

Mr. Williams: Did you then go back to where James was?

A. I went back to Mr. James' residence, yes sir.

Q. Where were you and James standing or sitting at that time?

A. We were in the garage.

Q. What conversation did you have after you got back?

A. I was in the garage approximately 10 minutes when he came out and said, "You are in this thing just as deep as I am. You have bought these snakes all over the country.

I have had you out here at the house. Different people have seen you." He said, "Now, bring that box in the house." He went behind me and I walked ahead of him with the box.

Q. What box?

A. The box with the snake in it.

[fol. 161] Q. Was that one of the glass top boxes?

A. That was one of the glass top boxes, yes sir.

Q. And did you go into the house?

A. I went into the house. He went by me and raised this lady's foot up—

Q. Wait a minute, you are getting ahead of your story. When you went into the house, did you go in through the back door?

A. Yes, sir.

Q. Did you go into the kitchen?

A. Yes, sir.

Mr. Clark: Just a moment, that is leading and suggestive. I submit that as to these details it would be better that the witness should testify himself.

The Court: I don't think the question is leading, because it does not indicate what answer is expected. It is in the interest of getting the matter in sequence. However, I am going to ask you to avoid that manner of question as far as possible.

[fol. 162] Mr. Parsons: I don't desire to criticize counsel, and I don't believe counsel did it deliberately, but he stated to the witness, "You are getting ahead of your story", which would indicate there was some understanding about the story.

The Court: I don't think there is any such inference warranted by the question. It is evident that before any person can relate what happened inside a house, he must get into the house.

Mr. Parsons: I don't think any such inference should be made, however.

The Court: Perhaps it should have been omitted. However, the jury will disregard any inference.

Mr. Clark: I take it that it will be understood that I am objecting to the relevancy of the testimony?

The Court: Yes. Apparently the testimony is relevant.

A. He held the screen door open, and I went through the back door into the kitchen. He passed me, and Mrs. James was lying on the breakfast table with a piece of adhesive

tape over her eyes, and over her mouth. He went ahead of me, raised her foot up so I could get by, and pointed to where I was to set the box, on the seat of the breakfast table, which I did. In setting that down, the top flew back. He put her foot in the box. After he closed the box I took the box back to the garage.

By Mr. Williams:

Q. Was the snake in the box when the foot was put in it?
[fol. 163] A. Yes.

Q. Was it alive?

Mr. Clark: Your Honor, I submit that is leading.
The Court: Overruled.

A. The snake was in the box, and was alive.

By Mr. Williams:

Q. Did you notice any movement on the part of Mrs. James?

A. As I went in I noticed Mrs. James move on the table, yes.

Q. How was she clothed?

A. At that time she was in a nightgown. Her legs were bare. That is all that she had on, was a nightgown.

Q. Which leg was it that was put into the box by Mr. James?

A. The left one.

Q. Now, after that what did you do?

A. I stayed in the garage for approximately 15 or 20 minutes, and he came out and brought me a water glass full of whiskey.

Q. Do you mean James came out?

A. Yes, sir.

Q. Did you have some drinks with him at that time?

A. I did.

Q. State the conversation.

A. He said, "What is the matter with you? What are you so nervous about? She is all right. Drink this; it will [fol. 164] steady your nerves." I said, "I want the key to your car. I want to take the snake away, and get away." He said, "I will bring it out to you in a little bit." He went back in the house, and in a little bit he did bring the key to

the car. I put the dead chickens, the box with the snakes, and a gunny sack in the car.

Q. Where did you go?

A. To Los Angeles.

Q. Whom did you meet?

A. I met my wife. I went to the apartment. She was not there. She was visiting some friend approximately three or four blocks away from her apartment house. I drove over there, and as I drove up she and her friends came out and got in the car, and I followed her around to her apartment. At that time, when she started to get into Mr. James' car——

Q. Don't tell any conversation. Did she get into Mr. James' car?

A. She did.

Q. And then where did you three go?

Mr. Clark: That is objected to on the additional ground that this evidence is incompetent, irrelevant and immaterial.

The Court: Overruled.

A. We drove over toward Pasadena, stopped on the way, and she had her dinner, drank some beer. We went on over to this place where I had purchased the snakes, and returned the two snakes to this man.

[fol. 165] By Mr. Williams:

Q. That is Snake Joe?

A. Yes.

Q. After that where did you go?

A. We got in the car. I don't know just where we did go at first, but we started towards Los Angeles. We all were going to drive to the beach. We always go to the beach on Sunday, and it was growing a little late at that time, and we did start to the beach. Along on Venice Boulevard I threw one of the boxes out. It was getting dark. She said we would not have time to go to the beach; that we were invited out that evening; that we might as well go over there now. I said "All right"——

Q. Never mind what you said. You did throw one of the snakes out. At what place?

A. On La Canada, within a mile or two of Venice Boulevard.

Mr. Parsons: What was that answer, please?

A. On La Canada, near Venice Boulevard.

By Mr. Williams:

Q. You don't mean La Canada, do you?

Mr. Clark: La Cienega?

A. No, I mean La Cienega.

By Mr. Williams:

Q. And that left you how many boxes in the car?

A. One box.

Q. Did you do anything with the second box?

A. Threw it out along the roadway on Venice Boulevard.

Q. Now, did you go back to the James house after that?

[fol. 166] A. I returned there about 1:30 at night. We went to call on these people.

Q. Did you go by yourself to the James house?

A. I went by myself to the James home.

Q. By what means did you go?

A. In Mr. James' car. I went to return his car to him.

Q. When you got to the James house what did you do with the car?

A. Put it in the garage.

Q. And did you then see anybody?

A. Mr. James came out. He had been drinking and wanted to know where I had been and what I had done with the snake.

Mr. Clark: Just a moment. I think any conversation that occurred at that time would be subject to the same objection and upon additional grounds, that is, I mean for additional reasons.

The Court: You may state the other grounds of your objection.

Mr. Clark: Assuming the existence of any conspiracy, it would appear from the testimony that the witness has given, that the conspiracy, so far as he was concerned, is at an end, and therefore, his conduct and actions thereafter are not relevant and are wholly immaterial.

The Court: That objection supplementing the objection previously made to conversations with the defendant will be overruled.

[fol. 167] Mr. Williams: Just state the conversation that you had with James when you got back there about 1:00 o'clock.

A. Continuing where I left off?

Q. Yes.

A. Well, I got him in the car and he sat down in the car with me and put the bottle down in the seat and had a couple of drinks with me and kind of cooled down a little bit and he said, "Those snakes are no good either. My wife is not even sick." I said, "Why didn't you take her to the hospital?" and he said, "No, they will strike us both higher than a kite."

He jumped up and said, "I am going in and drown her."

Mr. Clark: Now, we object on the ground that it is an attempt to prove the corpus delicti by the statements of the defendant—

The Court: Motion denied; and the objection overruled.

By Mr. Williams:

Q. What happened after he said that?

A. James went in the house and I stayed in the car. About 4:00 o'clock he came out and said, "That is that."

Mr. Clark: Just a moment. I object to any further statement of the defendant as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

A. He said, "Stay here a little bit, and I will take you into town." I don't know what time it was, but it must have been 6:30 or 7:00 o'clock and he came back out and says, [fol. 168] "She has been dead since 4:00 o'clock. The house is all cleaned up and you will have to go in and help me carry it out."

By Mr. Williams:

Q. Did you go in?

A. Yes, I went in through the back door.

Q. Did you see anybody in the house?

A. After I got into the kitchen, yes.

Q. Whom did you see?

A. I saw Mrs. James laying on the floor in the hallway, her head towards the front of the house.

Q. You say her head was towards the front of the house?

A. Yes.

Q. Towards the bathroom?

A. No, her feet were towards the bathroom.

Q. And her head was toward the front of the house?

A. Yes, sir.

Q. And was she living or dead at that time?

A. She was dead.

Mr. Clark: Just one moment—Oh, I don't think I will object to it.

The Court: I didn't get the answer.

(Answer read by the reporter.)

A. She was dead.

By Mr. Williams:

Q. What happened after you got to where her body was in the house?

A. James took the upper part of the body and I took the [fol. 169] lower and he went through the door that led out to the back, down to the sidewalk towards the fish pond. He said, "You will have to put her in the fish pond." And I said, "I won't do it." And I went back to the car and I was in the car approximately three or four minutes when he came back to the car and handed me a bucket of soiled clothes. In this bucket I saw a couple of pieces of rope and a red sweater and some tape. Also there were three blankets in the back end. We started to Los Angeles, and on our way he says, "Don't get all excited, don't be so nervous. I will take care of you when I get this money."

We drove to Virgil and Byrne and he got out and he handed me \$30.00 and he said, "You will have to dispose of this stuff and get out of town."

Q. What did he do then?

A. I took the blankets and bucket and put them in the back end of my car. I went around with my car and I went to get my wife and she was having breakfast.

Q. You saw her then at that time?

A. Yes, sir.

Q. Now, thereafter, did you do anything with that bucket and its contents?

A. Not right at that time, no sir. I took her to work and came back and took the stuff out of the back of the car

and packed it in the sack that had dead chickens in it, and put it back in the car.

[fol. 170] Q. Then what did you do?

A. I went for a drive. I don't know where I was going.

Mr. Clark: What was the answer?

A. I went for a drive.

By Mr. Williams:

Q. What did you do with the blankets?

A. I left them in the house. There was a bunch of laundry that was going to the laundry, and I left it on the floor.

Mr. Clark: I am sorry, but we cannot hear over here at all.

The Court: Just keep your voice up.

A. We left the blankets on the floor, where there was some other dirty linen that was going to the laundry, and I left it on the floor.

Q. Now, Mr. Hope, did you thereafter do anything with the material that had been in the bucket?

A. Yes, I disposed of it in the incinerator.

Q. What did you dispose of? Tell us everything that you put into the incinerator?

A. I don't know what was in there.

Q. Well, just as you can remember.

A. A red sweater, a couple of Turkish towels and I do not know what else was in the bottom of the bucket. There was some other things, but I do not know what they were.

Q. And now, about those chickens, what did you do with those?

A. They were in the sack. Those that were in the sack [fol. 171] were left in the sack and thrown in the incinerator with the others.

Q. Where did you burn this stuff?

A. At the incinerator back of the drug store.

Q. At what location?

A. Out in the location of—on South Vermont.

Q. Did you do anything with the blankets other than leave them there in the house?

A. Yes sir, there was one blanket that was damp and wet and the other was dry. I called my wife at 12:30 or quarter of 1:00 and took her to lunch and procured this laundry to

take to the laundry, and there were two of the blankets taken to the laundry that were laundered. That laundry is located on Santa Monica Boulevard about a block and a half from Virgil Avenue.

Q. And did you see that laundry?

A. Yes, sir.

Q. Do you know where that is now?

A. Yes sir, District Attorney's office has them.

The Court: I didn't get that.

A. The District Attorney's office has them.

By Mr. Williams:

Q. Everything you have testified to occurred in Los Angeles County, California, did it?

A. Yes.

Q. I show you now some rope and ask you if you recognize that as being any rope that you saw at any time in connection with this transaction that you have told us about?

A. That looks exactly like the rope, the piece that was in the bucket there.

Q. And when you saw Mrs. James in the kitchen, will you describe the type of rope or kind of rope that she was tied with at that time?

A. Like this, like cotton clothes line.

The Court: Just to clear the record. As I understand your testimony was that the rope in the bucket was burned?

A. In pieces.

Q. And that appears to be the same kind of rope?

A. Yes, sir.

Mr. Williams: I ask that this be marked—

The Court: 11 for identification.

Mr. Williams: Yes, that will be number 12, won't it?

The Court: It will be 11 for identification.

By Mr. Williams:

Q. Did you observe the manner in which Mrs. James was dressed at the time that her foot was forced into the box?

A. Yes.

Mr. Clark: I object to that as incompetent, irrelevant and immaterial.

Mr. Williams: If it has not been answered, I don't insist.

Mr. Clark: It has. He stated she had nothing on but the nightgown.

Mr. Williams: That is all right if he did.

[fol. 173] Q. Did you observe the manner in which she was dressed at the time you observed her, how she was dressed?

A. In pajamas and house shoes.

Q. Did you observe whether she was dry or wet?

A. The clothing was all dry but her hair was a little damp.

Q. Did you observe whether there was any wire in the vicinity of the pond, or a fence?

A. There was. There was a fence about a foot and a half high.

Q. Of what material?

A. Chicken wire.

Q. Did you observe anything about that, whether it was laying or standing?

A. The fence was standing up all right, but the two sections towards the front of the house were smashed down.

Q. In what manner?

A. Pardon?

Q. In what way?

A. Well, they were just bent in toward the fish pond, the last two sections.

Q. Now, I show you People's Exhibit No. 10 for identification and ask you whether that is similar to the fence that was around that fish pond?

A. That is it, because I helped bring it in from out there.

Mr. Williams: May I have the exhibits, please, Mr. Moore?

[fol. 174] Q. I will show you now People's Exhibit 6 for identification and ask you to examine that and state whether that is the picture of anybody you knew?

A. I have seen it before and I say it is a likeness of Mrs. James.

Q. That was the Mrs. James you remembered carrying out that morning?

A. Yes, sir.

Q. The same woman whose foot was thrust into the box?

A. Yes, sir.

Mr. Williams: Have you gentlemen seen these pictures?

[fol. 175] By Mr. Williams:

Q. Now, Mr. Hope, I direct your attention to the drawing, People's Exhibit No. 1 for identification, and direct your attention to the kitchen. Was there in the kitchen, at the time that you went in with the box containing the snakes, a table?

A. Yes, sir.

Q. And where was that table located?

Mr. Parsons: Now, if your Honor please, not to interrupt unduly, but he is turning his head, and I don't hear a word now.

The Court: Mr. Hope, you will have to try to keep your voice up again. Keep this in mind: it really is harder to be heard in this courtroom than we ordinarily believe, so if you will do that.

The Witness: Now, the question?

By Mr. Williams:

Q. The question is where was the table at that time?

A. It was pulled out from between the—the table was pulled around here.

Mr. Clark: Is the witness designating a place where there is a door between——

Mr. Williams: He is indicating that it was pulled——

A. Between the breakfast nook and the dining room. There is the seat I set the box on, right here, (indicating).

Q. Indicating the more northerly of the two objects marked "Seat", which appear in the kitchen. I will now [fol. 176] show you a photograph and ask you whether you recognize that as anything which you saw at that time? Do you recognize it?

A: No, sir.

Q. You don't?

The Court: We will mark that photograph 12 for identification.

Mr. Williams: 12 for identification.

Q. How was the table set, with reference to whether it was in a north or south direction, or east or west direction?

A. Well, it was cater-cornered. The table was like this.

Q. Indicating that it was running from the southwest to the northeast?

A. Yes, sir.

Q. And at that time when you saw Mrs. James on that table, did you have a conversation with Mr. James, other than you have already stated?

A. None whatsoever.

Q. Did you have any conversation with him at any time on the subject of how she happened to be on the table?

A. In the garage, after he came out to give me the key to the car, yes, sir.

Q. What was that conversation?

A. I asked him how he ever got her on the table.

• Mr. Clark: Just a moment.

A. I asked him how he happened to ever get her on the table, if she let him. He said he told her that a doctor was [fol. 177] coming out to perform some kind of an operation on her for pregnancy.

The Court: Just a moment, now. Let the record show that counsel indicated he desired to object before the question was answered, but counsel courteously permitted the witness to answer. Now, make the objection.

Mr. Clark: I object to it on the ground it is not a declaration in the course of the alleged conspiracy, but a statement or admission against interest, and not receivable for the purpose of proving the corpus delicti, and that the evidence is incompetent, and that no foundation has been laid for its introduction.

The Court: The objection will be overruled for the reasons previously stated, and other reasons.

By Mr. Williams:

Q. I show you now another picture, which I ask his Honor to mark No. 13 for identification.

The Court: 13 for identification.

By Mr. Williams:

• Q. And ask you whether you recognize that as being a picture of anything you saw in connection with that transaction?

A. Yes, sir.

Q. What is that?

A. That is a picture of the bathroom, the hall, and the door leading off to the kitchen.

Q. And which is the door leading off to the kitchen?

A. The door over here.

[fol. 178] Q. On the right-hand side of the photograph?

A. On the right side of the photograph, yes, sir.

Q. Can you tell us whether that picture shows the place where Mary James' body lay when you went in at 6:30 or 7:00 o'clock in the morning?

A. Yes, sir.

Q. Where did it lie?

A. Right here, sir.

Q. Indicating the floor of the hall, immediately outside of the bathroom door?

A. Right, sir.

Mr. Williams: We offer this in evidence at this time, if your Honor please.

Mr. Clark: To which we object on the ground it is incompetent, and irrelevant, and that no foundation has been laid for its introduction, in that no showing has been made that that photograph has been accurately taken, or that it correctly depicts the conditions as they existed at the time of the alleged homicide.

The Court: I think your foundation might be laid a little further.

Mr. Williams: Does this picture, with the exception of the lack of a human body lying there, does the picture correctly depict the bathroom and hallway, and walls, and doors, as you saw them that morning?

Mr. Clark: Just one moment. That is objected to on the [fol. 179] ground that it is incompetent.

The Court: Overruled.

A. I couldn't say about the location of things in the bathroom. I wasn't in the bathroom, but the hallway looks the same, two rugs, and I couldn't identify any objects in the bathroom.

By Mr. Williams:

Q. You are pointing now to the cosmetic jars which appear in the bathroom?

A. Yes, sir.

Q. Except for those would you say that it is a correct depiction of what you then saw?

A. Yes, sir.

Mr. Williams: We offer it in evidence.

The Court: Objection renewed?

Mr. Clark: Yes, your Honor.

The Court: It will be overruled. Mark it 13 in evidence.

Mr. Williams: May I show it to the jury at this time?

The Court: Yes.

Mr. Barnes: May we have a recess, your Honor? The witness is apparently getting sick.

The Court: We will take a short recess at this time. We will take a recess for a few minutes, and the jury will heed the admonition heretofore given. They may retire to the juryroom.

(Recess).

Mr. Williams: Shall I proceed, your Honor?

[fol. 180] The Court: You may proceed. The record will show the parties present, all parties present. You may proceed.

By Mr. Williams:

Q. Mr. Hope, at the time that you had the conversation with James, immediately prior to your going out to Snake Joe's to get the snakes, was there anything said on the subject of what, if anything, you should say to Snake Joe?

A. That I was supposed to tell him they was to fight chickens and dogs.

Q. Is that all?

A. That is all I remember, yes, sir.

Q. Was there anything said on the subject of a bet?

A. No, sir. I think the bet was with a man in Ocean Park. I had lost my money in a poker game, and I was to win the money back by proving that his snakes were poison.

Q. Is that what James told you to tell the man?

A. That is what he told me to tell the man at Ocean Park, yes.

Q. And did you tell that to the man in Ocean Park?

A. I did.

Mr. Parsons: May I have the last question and answer, your Honor? I didn't quite get it.

The Court: Yes, you may read it, Mr. Reporter.

(Question and answer read by the reporter.)

Mr. Parsons: Thank you.

By Mr. Williams:

Q. I show you now a picture, and ask you if you recognize [fol. 181] that as anything that you saw during the transaction that you have been telling us about?

A. It looks like the garage at the James residence.

Q. And is that a correct representation of that garage substantially as it appeared at the time that you were out there on Sunday and Monday morning, August 4th and 5th, 1935?

A. Yes, sir.

Q. I observe a table in the left corner of this picture. Was that table there?

A. That was the table that the snakes and the dead chickens were on.

Mr. Williams: We offer this in evidence as People's Exhibit 14.

Mr. Clark: To which we object as incompetent, irrelevant and immaterial, and no foundation shown, and it has not been shown whether it was done by means of some photographic device to make it the way it is.

The Court: The objection is overruled. Mark it 14 in evidence.

Mr. Williams: May I show it to the jury?

The Court: You may do so.

By Mr. Williams:

Q. Now, Mr. Hope, after Monday, the 5th of August, 1935, when next did you see James?

A. I don't remember the exact date; I would say it was several weeks afterwards.

Q. Where did you see him?

[fol. 182] A. In the barber shop.

Q. Did you have a conversation with James at the barber shop when you saw him?

A. Oh, just the general topics of the day at that time, yes; nothing was said about this.

Q. Did you see him again after that?

A. Yes, sir, I saw him on several occasions.

Q. Well, did you have any conversation with him at the barber shop on the subject of this killing?

A. Yes, sir.

Q. When was that, with reference to the day of the killing?

A. I would say it was a month afterwards.

Q. And did the conversation take place in the barber shop?

A. Yes, sir.

Q. Just what was the conversation?

Mr. Clark: Just one moment; that is objected to on the ground that first it is apparently an attempt to prove a confession of the defendant without showing its free and voluntary character, and secondly, that no foundation has been laid for such testimony, in that the corpus delicti has not been established otherwise than by the statements or admissions of the accused, and that it is an attempt so to establish the corpus delicti.

The Court: The objection will be overruled. The latter [fol. 183] part of the objection does not have to be renewed. As to whether or not it is a confession, the Court is, of course, unable to determine in advance, and I merely say this to the District Attorney, the distinction between a confession and other extra-judicial declarations of the defendant is so clearly defined that if there is contemplated a confession, the foundation should be laid. With that statement, the objection will be overruled.

By Mr. Williams:

Q. State the conversation, Mr. James—or Mr. Hope, rather.

A. He told me he would give me \$1,000.00 if we testified that we saw Mr. and Mrs. James married.

The Court: Just a moment. May I have that question read?

(Question read by the reporter.)

Mr. Clark: I move to strike that out, and ask that the evidence be stricken out, and the jury be admonished to disregard it, on the ground that it is an attempt to prove an offense other than that with which the defendant is

charged, and that it is irrelevant and incompetent to prove in this case.

The Court: Objection overruled.

Mr. Parsons: And motion denied?

The Court: And motion denied.

By Mr. Williams:

Q. By "we", whom do you refer to?

Mr. Clark: That is objected to on the ground that it calls for a conclusion of the witness.

[fol. 184] The Court: Sustained.

A. No.

Mr. Parsons: The witness' answer will be stricken?

The Court: Yes, the answer may be stricken.

By Mr. Williams:

Q. Did Mr. James say anything about "we", in using the expression "we"?

Mr. Clark: That is objected to on the ground that it is leading and suggestive.

The Court: Overruled.

A. He asked me if my wife and I saw he and Mrs. James married.

By Mr. Williams:

Q. Now, go on——

Mr. Clark: Of course, we persist in our objection.

The Court: I overruled the objection. The conversation thus far appears to be admissible.

By Mr. Williams:

Q. What was the rest of the conversation?

A. I told him "No", I wouldn't do it.

Q. Was that the substance of the conversation?

A. Yes, that was the substance of the conversation.

Q. Did you see him at a later time, and have another conversation with him?

A. Yes, sir.

Q. How long was that after the conversation that you have just related?

A. I don't know.

[fol. 185] Q. Well, do you know—

A. Well, it was sometime afterwards; quite a little while afterwards.

Q. Well, where did the conversation take place?

A. In the barber shop.

Q. What was said?

Mr. Clark: Just a moment. That is objected to on the ground that it is an attempt to prove a confession of the defendant without first laying the foundation therefor, by showing the voluntary character, and it is likewise an attempt to show the corpus delicti by statements of the defendant, and in both respects no foundation has been laid.

The Court: The objection is overruled, with the same comment as was made formerly.

A. I stopped in after work to get my hair cut, and after he had finished cutting my hair he slipped some money under the cloth, and put some money in my hand.

By Mr. Williams:

Q. How much?

A. It was \$100.00, and he said, "Don't remember anything about me, and I advise you to get out of town."

Mr. Clark: I move to strike that out as incompetent, irrelevant and immaterial.

The Court: The motion is denied.

By Mr. Williams:

Q. Did he say anything else at that time?

A. Well, the shop was full of people. He said, "Don't [fol. 186] try to give it back to me; somebody will see you, and you will get us all in bad."

Q. Was that the entire conversation as you now remember?

A. That is all.

Q. I will show you now a blue blanket, and ask you whether you recognize that?

A. Yes, sir.

Q. What is it?

A. A blanket that I got from Mr. James.

Q. On the 5th of——

A. On the 5th of August.

Q. 1935?

A. Yes.

.

[fol. 187] By Mr. Williams:

Q. I will show you now a pink blanket, and ask you whether you recognize that?

A. Yes, sir.

[fol. 188] Q. When and where did you see that?

A. In the James residence on August 5th.

Q. Is that one of the blankets that you took from your house to his house?

A. Yes, that is one of the blankets that went to the laundry.

Mr. Williams: We offer it in evidence at this time.

Mr. Clark: We object to it on the ground it is incompetent, irrelevant and immaterial, doesn't tend to prove any of the issues in this cause and that no foundation has been laid for its introduction, in that it has not been in any way identified as having any connection with the death of the deceased or with any of the facts in this case.

The Court: Objection overruled. Mark it 16 in evidence.

Mr. Williams: I show you now a tan colored blanket and ask you whether or not you recognize that?

A. Yes, sir, that was obtained at the same time and place.

Mr. Williams: I offer it in evidence.

Mr. Clark: Same objection as just stated.

The Court: Same ruling, overruled. Mark it 17 in evidence.

Mr. Williams: Mr. Kirby, will you stand up?

(Gentleman stands up in court room.)

Mr. Williams: Mr. Hope, do you recognize this gentleman that just stood up?

A. Yes, sir.

[fols. 189-190] Q. When and where did you first see him?

A. I saw him in Long Beach, the latter part of June. I purchased three snakes from him.

Mr. Williams: Sit down, Mr. Kirby. Mr. Allman, stand up.

(Gentleman stands up in courtroom.)

Mr. Williams: Do you recognize this gentleman?

A. Yes, he runs the snake pit at Ocean Park. I also purchased a snake from him.

Q. Was he the gentleman that was present when you and James were at that snake pit?

A. Yes.

Mr. Williams: Joe Houtenbrink, stand up.

(Gentleman stands up in courtroom.)

Mr. Williams: You are known as Snake Joe, are you?

Mr. Houtenbrink: Yes, sir.

By Mr. Williams:

Q. Do you recognize this gentleman?

By the Witness:

A. Yes, sir.

Q. Where did you see him?

A. I saw him on the 3rd day of August, in the afternoon. I purchased two snakes from him.

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[fol. 191] DOCTOR A. F. WAGNER, called as a witness in behalf of the People, being first duly sworn, testified as follows:

The Clerk: State your name, please.

The Witness: Doctor A. F. Wagner.

Mr. Clark: If your Honor please, I have known Doctor Wagner as an autopsy surgeon in Los Angeles County now for exactly 20 years. There will be no question as to the competency of Dr. Wagner as a medical expert.

Direct examination.

By Mr. Williams:

Q. Dr. Wagner, did you prepare an autopsy on the body of one Mary Emma Busch James?

A. I did.

Mr. Clark: Just one moment; I would like to move to strike all of that out for the purpose of making an objection.

The Court: People vs. Smith?

Mr. Clark: Yes, your Honor.

The Court: Objection sustained.

By Mr. Williams:

Q. Did you perform an autopsy on the body of a woman shortly after the 5th of August, 1935?

A. I did.

Q. I will show you now a picture that has been received for identification as People's No. 6 in this case, and ask you to examine that and state whether or not that is the picture of the body upon which you performed the autopsy?

[fol. 192] A. It is.

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By Mr. Williams:

Q. Doctor, when did you perform that autopsy?

A. On August 5th, 1935.

.

[fol. 193] By Mr. Williams:

Q. Just state the examination you made, and the determination you made as to the cause of death?

Mr. Clark: To which we object on the ground that no foundation has been laid.

The Court: Objection overruled.

Mr. Williams: I didn't catch your Honor's ruling?

The Court: Overruled.

A. There was the laceration on the plantar surface of the left great toe. The left foot was considerably swollen. On opening the body I found the lungs containing a considerable amount of water. There was no disease of any of the vital organs. The uterus showed a normal pregnancy of about six weeks duration. Superficial bruises of varying extent were found on the various parts of the body. A chemical analysis of the stomach, liver and kidneys was made, but no poison found.

By Mr. Williams:

Q. What conclusion did you reach as to the cause of death?

A. The cause of death was drowning, and an acute cellulitis of the legs.

Q. Will you explain to the Court what you mean by "acute cellulitis"?

A. Well, it is that disturbance of the legs of a swollen condition. It may be due to anything of a microorganic nature.

[fol. 194] Q. In this case what was the extent of the swelling?

A. The swelling was up to the hip. The discoloration was up to the knee.

Q. What was the extent of it?

A. Up to about the knee.

Q. Slight or—

A. Quite marked.

Q. What was the date upon which you performed this autopsy?

A. August 6th.

Q. Did you observe the location and character of the bruises which you observed upon the body?

Mr. Clark: Just one moment. That is objected to on the ground that it assumes a fact not in evidence.

The Court: Sustained.

Mr. Williams: I didn't catch the objection?

The Court: It admits bruises were found.

Mr. Barnes: He has testified that there were bruises on various parts of the body.

By Mr. Williams:

Q. Well, did you observe bruises on various parts of the body.

A. I did.

Q. Where were the bruises?

A. The bruises were on the interior portion of the right arm, and the chest—

Mr. Clark: May I apologize, but I must have overlooked [fol. 195] that part of the witness' testimony.

A. A slight bruise or scratches on the left arm, and there were quite a few superficial scratches on the fore-

head, and face, on cheek, and on the right arm, and the contusion that I have already stated extended around to the back of the arm. Then there were also the discoloration of the back of the leg up to the knee.

The Court: Which leg, Doctor?

A. The right leg, and when the body came into the morgue, the skin had slipped off half of this left leg.

By Mr. Williams:

Q. Any other discoloration?

A. On the back of the right arm, as I already stated.

Q. Now, referring again to People's Exhibit No. 6, I will ask you whether the discolorations which appear upon that picture are discolorations which you noted at the time of your performance of an autopsy?

A. Yes, sir.

Q. That is, so far as the front of the body is concerned?

A. Yes.

Q. I will call you particular attention to the left leg as shown in People's Exhibit No. 6, and ask you whether that shows a discoloration of the left leg?

A. It does not disclose it to the same extent that I actually saw it with my eyes. It is still there, but for some reason or other the light on the photograph made the whole lower part of the body fairly white.

[fol. 196] Q. Now, have you any opinion as to what might have been the cause, or may have been the cause of the acute cellulitis which you observed in the left leg and foot?

Mr. Clark: Just one moment. That is objected to upon the ground that it calls for surmise and speculation, and that it is incompetent.

The Court: Objection overruled. It appears to be a matter to which a medical expert should testify, being a condition not normal to the human system.

A. Cellulitis is always due to an infection of some kind, whether animal or vegetable; usually it is bacteria.

By Mr. Williams:

Q. Name some of the specific causes which might produce a condition of cellulitis, such as you observed in this particular body?

Mr. Clark: That is objected to on the ground that it calls for conjecture, surmise and suspicion. The Doctor can have no means of knowing what did cause it, other than as he stated, and it would be manifestly unfair for him to take three or four of the causes, specific things that might have been. The evidence is utterly incompetent.

The Court: Objection overruled. You may answer, Doctor.

A. I could mention the ordinary organisms that cause blood poison, like staphylococcus, and others with similar long names. Those organisms enter the body through a laceration anywhere, large or small. They cause a certain swelling, and a certain amount of inflammation, as this ap- [fol. 197] pears to be.

By Mr. Williams:

Q. Now, in case of a swelling, or a cellulitis caused from such a condition as you have just described, in reaching the proportions you observed in this body, what would be the normal length of time from the inception of the infection until the cellulitis would have reached the extent that it did in this particular individual?

Mr. Clark: That is objected to on the ground that it is not a subject of expert opinion, and that it calls for surmise or conjecture on the physician's part, in a matter in which anything other than surmise and conjecture would call for conditions not known to the witness.

The Court: Objection overruled.

A. I have forgotten the question.

The Court: Read the question.

(Question read by the reporter.)

A. Those causes that I referred to as being bacterial infection, that would take anywhere from two to three days to a week, but I didn't state all the causes. The animal poisons go much faster, because that is mostly all poison.

By Mr. Williams:

Q. What are the animal poisons which would produce such a cellulitis as you here found?

Mr. Clark: That is objected to upon the ground that no foundation has been laid for the introduction of such testi-

mony, in that it has not been shown that there is animal poison which causes the cellulitis in this case, and that it [fol. 198] is incompetent.

The Court: Of course, it could not be proved that that situation existed without some testimony. The Doctor did testify, however, that that condition might be due to one or two causes. Objection overruled.

A. The venoms of insects and snakes, spiders, and so forth.

By Mr. Williams:

Q. Is this the type of cellulitis which would be caused by the venom of a rattlesnake?

Mr. Clark: Just a moment.

The Court: That question is a little ambiguous in form, Mr. Williams.

By Mr. Williams:

Q. Could the cellulitis which you found in this body have been caused by the bite of a rattlesnake?

Mr. Clark: That is objected to upon the ground that the evidence is incompetent, remote, speculative, and conjectural, and that no foundation has been laid for its introduction.

The Court: Objection overruled.

A. It could have been.

By Mr. Williams:

Q. Now, Doctor, at a time subsequent to the date of the performing of an autopsy upon this body, did you again examine the body?

A. Yes, sir.

Q. When was that?

A. On the 5th day of May, 1936.

Q. In the meantime had the body been interred?

[fol. 199] A. Yes, sir.

Q. And when you examined it on that date was there anybody with you who participated in the examination?

A. Yes, sir, Dr. Boehme.

Q. And of what did your examination consist on the 5th day of May, 1936?

A. Why, we examined this left leg, the whole of the left leg.

Q. And what did you find?

A. My notes on that occasion were brief. This body was exhumed and reexamined on the 5th day of May, 1936, at about 10:00 A. M., with Dr. Boehme present. There were no new facts revealed.

Q. Now, did you at that time make any special examination of the incision that you had observed on the plantar surface of the great toe of the left foot?

A. We did.

Q. Did you reach any conclusion as to what had caused that incision?

Mr. Clark: Just answer that "yes" or "no".

A. Not a definite one, no, sir.

By Mr. Williams:

Q. Did you reach a conclusion as to what could have caused such an incision?

Mr. Clark: Just one moment. We object to that on the ground that it is incompetent, irrelevant and immaterial. No doubt a thousand things could have caused it. The only [fol. 200] question here is what did cause it.

The Court: The objection will be overruled. I don't think it is necessary to the admissibility of evidence that an expert, or autopsy surgeon particularly, is required to state positively that a particular, definite thing caused the condition. I think it is permissible for him to state that it might be caused by two, or three, or four things. Objection overruled.

[fol. 201] A. I forget just what form the question was.

(Question read by the reporter.)

A. Well, as I said before, it was a puncture laceration which of course was seen at the time of the second autopsy, although not quite as plainly as it was at the first.

Mr. Williams: Did you definitely form the opinion that there was a puncture?

A. Yes, sir.

Q. And in your opinion, taking into consideration the character of the wound and the effect of it in the acute cel-

lulitis that that wound and its effect had been caused by the bite of a rattlesnake?

Mr. Parsons: Just one moment; that is objected to upon the ground that it is leading and suggestive.

The Court: There is another objection, that might be urged. Perhaps the Court may be in error in this, but it is my inclination to feel that there should be some foundation laid showing that the witness is familiar with the appearance of the bite of a rattlesnake or the nature of it, either by actual observation or by reading or other acquired knowledge.

Mr. Williams: Do you have any knowledge of the appearance of the bite of a rattlesnake?

A. I have.

Q. Tell us how you acquired that knowledge.

A. I have never been bitten by a rattlesnake, nor have I ever seen anybody bitten, but the puncture, of course, is [fol. 202] a puncture that penetrates just the same as a nail or anything else. This was a puncture wound, and then there was a laceration of about a quarter of an inch leading away from it. Now then, from the description of the bites as shown in the literature one could come to the conclusion that it could have been made by the bite of a rattlesnake or anything else that would have a similar instrument for making such a puncture laceration.

Q. Did you reach such a conclusion?

A. I did.

Mr. Williams: May I, at this time, if the Court please, exhibit People's No. 6 to the jury?

The Court: I think I would defer that for the present, Mr. Williams.

Mr. Williams: You may cross examine.

Cross-examination.

By Mr. Clark:

Q. Doctor Wagner, I notice you have been referring to some paper as you have been giving your testimony. I assume that the paper you were using consisted of your notes made contemporaneously or nearly so with the time that you made the observation?

A. Yes, sir.

Q. And it has been necessary for you to refer to those notes in order to testify accurately, I take it?

[fol. 203] A. To testify accurately, yes sir.

Q. Where was it that you first saw the body upon which this autopsy was performed?

A. Down in the morgue.

Q. I take it that you first saw it on the day of the autopsy, August 6th?

A. Yes.

Q. What time of the day did you see it?

A. I may have seen it earlier than I performed the autopsy, but the autopsy was performed at 3:00 P. M. on the 6th day of August, 1935.

Q. And you have no means of knowing how long the body had been in the morgue at that time, have you?

A. Yes.

Q. How long?

A. The body was brought into the morgue at 12:30 A. M.

Q. That would be half past 12:00 on the morning of the 6th?

A. Yes, sir.

Q. Now, there at the morgue, Doctor, were steps taken to arrest decomposition of this body?

A. Well, the body was embalmed at 10:30 A. M. of that day.

Q. And embalming fluid was used for that?

A. Yes, sir.

Q. And before that the body was kept in a cold place in the morgue, wasn't it?

[fol. 204] A. No, I don't think so. I have no knowledge about that. The bodies are brought in, and when they are brought in they are put on a slab and then as the men can get time to get at them, why they take them as they come and embalm them.

Q. What kind of a slab is that?

A. Just an iron table, porcelain and iron.

Q. Now, the time of the autopsy was pretty warm weather, was it not, Doctor?

A. I don't remember that; I didn't make a note of that.

Q. What I am trying to get at, is, to what extent, if any, had decomposition set in, when you first saw the body?

A. No decomposition.

Q. Decomposition progresses somewhat more rapidly in warm weather than in cold, does it not?

A. Yes, but it is not very warm down in our morgue. The temperature is very uniform.

Q. That is what I tried to get at a moment ago, and for that reason I tried to fix as accurately as possible the time when the body came into the morgue. You have no means of knowing how long the body may have been exposed to the open air before it came into the morgue, have you, Doctor?

A. No.

Q. If the body was exposed to the air in warm weather, decomposition at that time of the year, with the temperatures that prevail there, would progress rather rapidly, would it not?

[fol. 205] A. Yes, but there was no manifest decomposition here.

Mr. Parsons: May I have that answer read, please?

A. There was no manifest decomposition.

Mr. Clark: As bearing upon the matter of decomposition, the presence of open wounds is to be taken into consideration, isn't it? That is, where there are open wounds magots are likely to get in them in a few hours, aren't they? [fol. 206] A. Small wounds don't show much decomposition. We have bodies lying down there for quite a while, and it doesn't seem to progress.

Q. Did you form any opinion at the time you performed this autopsy as to how long the woman had been dead?

A. Only in a general way. In fact, I didn't give it much thought.

Q. As a matter of fact, there were no conditions from which you could form a close opinion, were there?

A. No, except it had not been dead long.

Q. What would you think, in your opinion, as the maximum time that the body could have been dead?

A. That body could have been dead from 12 to 24 hours. I could not fix any definite time.

Q. I believe you stated that in your opinion the cause of death was drowning?

A. Yes, sir.

Q. And will you just tell the jury why you fix drowning as being the cause of death?

A. Well, these lungs were more filled up with water than we usually find even in drowning, that is, in the usual cases

of drowning. The lungs were filled up, practically, with water, and in such a case, of course, that causes death.

Q. As I understand it, the lungs are a spongy matter that expand and contract as we take in a supply of air?

A. Yes, sir.

[fol. 207] Q. That is one of their principal functions?

A. Yes, sir.

Q. Taking in the oxygen which is necessary for combustion in the body?

A. Yes.

[fol. 208] Q. And when a person's lungs become filled with water, the air is cut off by the water?

A. Yes, sir.

Q. The water is taken into the lungs by the movement of the lungs in contraction, is that right?

A. That is right.

Q. So that, if the body were already dead, you wouldn't expect to find water in the lungs. You wouldn't expect to find water in the lungs?

A. No, sir.

Q. Those are the facts and the process of reasoning upon which the death was caused by drowning?

A. Yes, sir.

Q. Now, just a few questions in regard to the cellulitis. You say cellulitis is the result of bacterial action?

A. Yes, sir.

Q. It is true that some strains are very much more virulent than others?

A. Yes, sir.

Q. So that a period exists when bacterial disease depends very largely on the virulence of the bacteria?

A. Yes, sir.

Q. So that if the virulence was caused by bacteria you would have to know two things, the kind of bacteria and how virulent they were, in order to know how long it would take to produce the swelling and discoloration, isn't that true?

[fol. 209] A. It would.

Q. Now, in the course of your medical experience you have seen such cellulitis developed from a dog bite, within a few hours?

A. Not to that extent.

Q. You have seen it enough to swell a man's shoulders in half a day?

A. Well, half a day, it would have to be quite virulent.

Q. And also more than that with flies, haven't you, Doctor?

A. Well, that is different then, yes.

Q. You cannot tell what the flie- may be carrying and put in an open wound?

A. Yes, but it doesn't cause the whole limb to be swollen in a short length of time. If infection starts right away, it has to take some time before it is manifest to the eye.

Q. Well, you have seen a snake's fangs, haven't you, Doctor?

A. Have I what?

Q. You have seen a rattlesnake's fangs.

A. Yes, I have but—

Q. And they are slender, curved almost needle pointed, aren't they?

A. Some are and some are straight. There are different kinds of fangs and different species of snakes.

Q. And could you tell whether the puncture that you saw made by a rattlesnake's fang, a dog's tooth, a needle [fol. 210] or a sharp pointed article was different from a fang?

A. It would not include anything and everything. It must conform to something that might have made this cut.

Q. It might have been made from a thorn?

A. As far as I could prove it; I couldn't say which.

Q. Now, referring to animal poison—

The Court: Before we get into that, it is so close to the noon hour, that I think we had better take a recess.

Mr. Clark: Yes, I think so. My examination will take four or five minutes longer.

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[fol. 211] Q. Doctor Wagner, when you performed the autopsy on this woman, you made an inspection of the vital organs, did you not?

A. Yes, sir.

Q. That included stomach, of course.

A. Yes, sir.

Q. You made no chemical or other tests of the contents at that time, did you, the contents of the stomach?

A. The stomach and kidneys particularly, at that time.

Q. And what, if anything did you ascertain with regard to the presence or absence of alcohol in the stomach?

A. There was none found.

Q. Now, something has been said here with regard to animal poisons. By that you mean to include all members of the animal kingdom as distinguished from bacteria, don't you?

[fol. 212] A. Those that form venoms.

Q. That embraces such things as ants, bees—we will cut out bees. Ants, snakes, scorpions, tarantulas, spiders, gila monsters and everything of that sort?

A. When we are making a general statement, yes, that is true.

Q. Now, there is nothing disclosed by your examination that would enable you to even form an opinion from the examination, aside from what was communicated to you by others, as to whether this cellulitis was caused by animal poison or bacteria, was there?

A. To distinguish between animal poison and bacteria at that time I could not make any distinction.

Q. You say you could not at that time. Did you afterwards make any other examination by which you could?

A. Just to examine the wound you couldn't, but you could not include all the things like you mentioned, like ants and things that wouldn't make any mark like that. It would have to be something that would make a small laceration but still more extensive than an ant or a bee would make.

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By Mr. Clark:

Q. Now, during the course of your testimony you not only referred to your written memoranda made at the [fols. 213-219] time of your examination, but you stated orally all of those things that you had recorded in that memorandum, did you not?

A. I stated orally all that I recorded in the memorandum?

Q. Yes, in other words, you virtually read the memorandum and testified to it?

A. Those were the notes I made.

Q. You virtually read aloud the memoranda as you gave your testimony?

A. Yes, sir.

Q. And you repeated everything that you observed as you regarded it as being significant?

A. Well, we do not go into everything, no, but we go into the main facts with the notes.

Q. Well, do you now remember any other notes that you regarded as significant, other than those in the memorandum?

A. That are significant, no.

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[fol. 220] Q. You made no written memorandum concerning a snake bite at the time of that examination, did you, Doctor?

A. I never thought of it.

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[fol. 221] By Mr. Clark:

Q. Referring now to People's Exhibit 6, Doctor, with the photograph facing us, I understand the left leg to be the one nearest the right?

A. Yes sir, that is the left leg.

Q. And it appears in the photograph to be larger than the other, it would seem that way to you?

A. Yes, sir.

Q. And you, as I understood your testimony, you followed the discoloration and believed it to be more extensive than seems clearly depicted from the photograph?

A. Yes, I did.

Q. And it was by reason of the extent of the discoloration that you thought the puncture, or that the cellulitis was more probably caused by some form of animal poison, is that right? Please read the question, Mr. Person, I formed it somewhat hurriedly.

(Question read by the reporter.)

Mr. Clark: Let me withdraw the question and reframe it.

Q. It was because you thought the discoloration was greater than would be the case as the result of a bacterial [fol. 222] action, that you formed the opinion that the cellulitis was probably caused by animal poison, Doctor?

A. Yes.

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Q. Now, the cellulitis introduced in the body, the extent of their effect depends very largely on what kind of bacteria they are and how much they multiply?

[fol. 223] A. Yes, it depends upon that.

Q. And when you do not know how long they have been in the body, you cannot tell how rapidly they have multiplied?

A. No.

Q. And it is common practice, with bacteria causing greater trouble?

A. The extent of the area involved with a big purplish discoloration, still makes my answer to your question good, that it would confirm more to the point in the development of the toxin of bacteria.

[fol. 224] Q. Doctor, you have to examine a patient for blood poison?

A. By "blood poison" you mean blood poison.

Q. And in those cases sometimes the discoloration extends the entire length of the limb, doesn't it?

A. Then that is gangrene.

Q. Gangrene is simply a further result of the bacterial action, isn't it?

A. Yes, in some cases bacteria causes gangrene, and in others gangrene is caused by inflamed tissue, the tissue being inflamed first, and then gangrene following secondary.

Q. And, Doctor, I find it necessary again to refer for a moment to People's Exhibit 6, being the photograph we were looking at. The dark spots upon the body I take it, near the neck and shoulders, are some of the bruises that you noticed when you saw the body, am I correct?

A. Yes, sir.

Q. Those bruises were indicated upon the body by discoloration?

A. Yes, sir.

Q. Now, in other words, there were black and blue spots?

A. Yes.

Q. Now, am I correct in my understanding that those black and blue spots are caused by a rupture of the smaller blood vessels, and the blood exuding out into the surrounding tissue?

[fol. 225] A. That causes the condition, yes, sir.

Q. When a person dies the circulation of the blood is stopped?

A. Yes.

Q. Does a dead body bruise like a live body?

A. No.

Q. Then your inference in regard to the bruises is that the body was alive when the bruises were placed upon the body, is that correct?

A. Absolutely.

Q. Directing your attention to the right arm, there seems to be quite an extensive area of discoloration apparent there. Was there actual discoloration, or is that a shadow made in taking the photograph?

A. No, that is an actual discoloration, and extended around to the back of the arm.

Q. Now, that would be a discolored spot approximately as large as one's hand, including the fingers, would it, Doctor?

A. Yes.

Q. Is that about a fair estimate?

A. I think so.

Q. Did you make any examination to see how deeply that bruise had extended?

A. Yes. They weren't very deep.

Q. They were superficial bruises?

[fol. 226] A. They were down into the subcutaneous tissues.

Q. By the way, the body was that of a well-nourished woman, was it not?

A. Yes.

Q. Rather inclined toward being stout, would you say?

A. She only weighed 128 pounds, and her height is 5 feet 9½. She was not stout at all. She didn't look emaciated.

Q. Such superficial bruises don't necessarily imply exertion of great force, do they, Doctor?

A. They imply exertion of sufficient force to produce them, and that means breaking of the capillaries and smaller blood vessels in the tissues.

Q. Sometimes with some people that is accomplished with very small force, is it not, Doctor?

A. I seldom find it, except in the aged, or those who have been subject to prolonged disease.

Q. Now, I am not withholding this photograph from you to deprive you of any refreshment it may give you. If you wish to see it, just speak. But you also noticed some marks and scratches on the person, didn't you?

A. Yes.

Q. Those were about the face and head particularly, were they not?

A. Yes, sir.

Q. And those were placed where the blood had come to the surface, where the skin had been severed?

[fol. 227] A. Some of them. There was one in the forehead.

Q. You formed an opinion from that circumstance that those cuts or scratches had occurred before life was extinct, did you not?

A. Yes, sir.

Q. Now, in making your examination you examined somewhat the mouth and nostrils, didn't you?

A. Just from the outside. I didn't open the mouth or the nostrils.

Q. Did you notice anything in regard to either the mouth or the nostrils, other than the usual condition of mouths and noses of dead bodies?

A. I did not.

Q. In the course of the practice of your profession you have occasion to bandage various parts of the body, don't you, Doctor?

A. In my profession as autopsy surgeon?

Q. Yes, in your practice outside of your official work?

A. Oh, before I did this work, yes, I used to use bandages at various times, and for various purposes.

Q. There is a substance called "adhesive tape" that is sometimes used for the purpose of drawing the edges of wounds together, and things of that sort, is there, Doctor?

A. Yes, sir.

Q. That has some kind of a coating which causes it to adhere rather firmly to the flesh, doesn't it?

[fol. 228] A. It does, to the skin.

Q. Yes, to the skin, I should have said. Thank you. And where adhesive tape has been applied to the skin you have to make use of some chemical substance to pull it off without pulling off some of the hairs of the skin, also?

A. Well, that is sometimes used. Sometimes you just rip it off.

Q. When you rip it off it leaves its mark for a time, doesn't it?

A. It does if you have it on there for any length of time, but to take it off soon, it doesn't leave much of a mark.

Q. You saw on the mouth of this body no such mark as is made by the removal of adhesive tape, did you?

A. I did not.

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[fol. 229] Q. Dr. Wagner, you didn't find anything in the [fol. 230] cellulitis that would negative it having been caused by a black widow spider, did you?

A. Well, I haven't seen any black widow spider bites, but I have had them described to me by persons who have been bitten. I don't know just how a black widow spider infection will spread, or the discoloration. I believe there is some swelling and discoloration there. I am not competent to make the distinction between the two.

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DR. GUSTAVE F. BOEHME, called as a witness in behalf of the People, being first duly sworn, testified as follows:

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Direct examination.

By Mr. Williams:

Q. You are a physician and surgeon regularly licensed to practice as such in the State of California, are you, Doctor?

A. I am.

Q. How long have you been a physician and surgeon?

A. Since 1910.

Q. How long have you been practicing in the State of [fol. 231] California?

A. Since 1921.

Q. Do you now have an office in the City of Los Angeles?

A. I have.

Q. Have you made any study of the subject of snake bites, and their effect?

A. As a hobby, for a good many years.

Q. When did you first start making such study?

A. About 1904, when I worked in the College of New York. I kept that up until I came out of medical school in 1910, and from time to time. I went down to Dr. Harry Egbert's place in San Diego, and went over his snakes with him. Then I was very much interested in the Eastern snakes, and especially of Charles Lindley, a physician there, and literature on the subject. I personally have been bitten by a snake, and I have seen others that have been bitten.

Q. Have you treated snake bites?

A. Once upon a patient, and once upon myself.

Q. You say you have made some study of the literature, as well?

A. Yes, I have.

Q. Did you make an examination of the body of a woman in conjunction with Dr. Wagner, on the 5th of May, 1936?

A. I did.

Q. Just state what examination you made, and what you saw?

A. The body was brought to the morgue, and Dr. Wagner [fol. 232] did the actual physical work. The bandages were removed from both legs, and it was then noted immediately that the left leg was very much enlarged in circumference as compared with the right. It was markedly discolored, almost mahogany in color. There was in the back of the calf an area of incision which Dr. Wagner had made when he studied the case in the first place. There was some swelling of the lesion from the knee up to the hip. The superficial material which had accumulated on the limb was then removed by Dr. Wagner by a rag and a knife. At the base of the great toe, on the left side, toward the median side, there was present, running across the great toe an old laceration wound approximately a quarter of an inch in length.

Q. Did you examine that?

A. We did.

Q. Did you form any opinion as to what was the cause of it?

A. So far as the wound, itself, was concerned, it could have been caused by a number of different things. It could have been caused by laceration; it could have been caused by snake bite; it could have been caused by some other method, but combining it with the other findings in that, I did come to an opinion.

Q. What is that opinion?

A. That opinion was that probably this woman's toe had been bitten by some venomous creature, probably a snake, [fol. 233] and all the other findings on the leg were compatible with such a finding.

Q. Now, give the reasons on which you formed that opinion?

A. In the first place, a snake bite travels by the lymphatics, and not so much by the blood vessels, which give at first localized pain, then progressive localized swelling,

which travels upwards on into the limbs. The snake venom acts on the blood vessels to produce these large black and blue areas, which are known as ecchymosis to the profession. And with all of these physical findings corresponding to a snake bite on this woman's leg, I felt it was a probability.

Q. Was the incision of such a character as in your opinion can be caused by a snake's venom?

A. Yes, it was such as could be caused by a fang striking at an angle, perhaps.

Q. Do you have any knowledge of the effect of snake bite upon the individual who is bitten, whether it causes or does not cause pain; or as to the character of the pain?

A. Well, the effect of the snake bite depends upon the location and the structure struck. When the face, or the buttock is struck, there is a large blood supply, and if the snake hits directly into a large field of blood vessels, rapid absorption takes place, and then the patients have a rather rapid death, probably three or four hours in some instances. [fol. 234] As a general rule the snake bites into the leg or arm. When it does this, unless a large blood vessel is struck, there is immediate pain at the site of bite. The pain is very marked, and then as the poison travels through the lymphatics and is gradually absorbed by the blood vessels you have all of these local changes I have described. Then we have the effect on the blood vessels and on the central nervous system and finally death. In the majority of instances death is from the heart, but in some instances it is a respiratory death.

Q. In what length of time in the case of a bite on the great toe, within what limit of time would death probably result?

A. Well, a good deal depends upon what dose the patient gets of the poison. Ordinarily a snake bite will, within two hours, produce considerable swelling and pain. At the end of four hours you will notice some of the ecchymotic pain. Then if the patient is properly protected it may stop. If the patient is not protected, then the poison is absorbed and in a period of from 16 to 24 hours death occurs.

Q. Would the fact that a snake bite was in the great toe, rather than higher up on the leg, have any effect upon the rapidity with which death would be caused?

A. Yes, it would. It would slow up the absorption.

Mr. Parsons: May I have that last answer, your Honor?

(Question and answer read by the reporter.)

[fol. 235] By Mr. Williams:

Q. Do you know whether snake bite causes pain in the individual who is bitten?

A. It does.

Mr. Parsons: Just a moment. What was that question?

Mr. Williams: Whether snake bite causes pain?

A. It causes intense pain.

Q. Does that pain continue throughout the length of time from the time of the bite until death ensues?

A. I don't know that definitely, Mr. Williams.

Q. Now, Doctor, did you, at my request, attend at the office of the District Attorney a few days after the 5th of May, I think it was, and were you present there while some venom was removed from two snakes by a man whom you knew as Snake Joe?

Mr. Clark: Just one moment, that is objected to on the ground that it is irrelevant to all of the issues in this case.

Mr. Williams: It is preliminary.

The Court: I think I will permit the question to be answered.

A. I did attend such a session.

By Mr. Williams:

Q. And at that time, was the venom removed from two snakes in your presence?

Mr. Clark: Just one moment; that is objected to on the ground that it is incompetent, irrelevant and immaterial and if it is for the purpose of showing that these particular [fol. 236] snakes that feature in the testimony here were capable of producing the venom, I object to it on the further ground that it is remote, incompetent and I offer to show by voir dire examination of this witness that he could not tell as to what the conditions might have been at the time of the alleged death of this person.

The Court: I don't think that would be determinative of the question. I am rather in doubt, however, as to the direction in which the examination is leading us.

Mr. Clark: May we approach the bench?

The Court: Certainly.

(Following discussion was had at the bench out of the hearing of the jury:)

Mr. Williams: I intend to prove that the two particular snakes which were purchased at Snake Joe's and thereafter returned to him are the snakes from whom venom was removed. One of those snakes is the one which bit Mrs. James. I intend to establish that the venom from each of those snakes was taken separately and the venom of each of those snakes was injected into a guinea-pig and it was entertained that the guinea-pig died with the characteristic symptoms of snake bite within a certain number of minutes after the injection of venom of each of the snakes into the pigs, the venom of one snake into one pig and the venom of another snake into another pig, for the purpose of showing that these particular snakes were of the type and character which carried venom. The experiment was made by [fols. 237-240] Doctor Boehme and it is through him I intend to prove the effect on the guinea-pigs and the autopsy which he performed on the guinea-pigs.

Mr. Clark: In the first place, there is so far no evidence that Mrs. James was ever bitten by a rattlesnake unless it be a circumstance——

The Court: I think the evidence is sufficient here to say that an inference of that sort can be drawn. It may be debatable

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Mr. Clark: The defendant is presumed to be innocent, and the circumstances must be sufficient to support the inference to be drawn. I find no circumstances under which it can be inferred that this woman was ever bitten by a rattlesnake, nor do I find any circumstances from which it can be inferred that the rattlesnakes were in the same condition in the early part of August of last year that they were at the time that these experiments were performed.

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[fol. 241] By Mr. Williams:

Q. Doctor, shortly after the 5th of May, 1936, in the office of the District Attorney, in this County, in your presence,

did the man that you know as Snake Joe extract the venom separately from two rattlesnakes?

Mr. Clark: It is after the conference, and in line with the objection that we expressed to your Honor, that it is being mentioned, with reference to all the testimony concerning any of this venom, and any experiments that were made with them.

The Court: The objection is overruled.

A. I did.

By Mr. Williams:

Q. And how was that rattlesnake venom extracted from the snakes?

A. The snakes' fangs were driven into a bottle that was covered with a piece of rubber, and the fluid from the fangs was allowed to enter into the bottle, itself, and some, of course, accumulated on the rubber.

Q. Was the venom from each fang put in a different bottle?

A. Yes, sir, it was put in a different bottle.

[fol. 242] Q. And what, if anything, was done with the bottles?

A. The bottles were taken by me and examined that night.

Q. Do you remember the date of this examination?

A. On May 7th, if I remember correctly.

Q. May 7th?

A. Yes, sir.

Q. And what did you do with that venom?

A. The one snake had fairly good fangs, and we got practically pure venom. That venom, a portion of it, was injected into the interior abdominal wall of a rabbit—or rather, a guinea pig, weighing 508 grams. From the other snake we didn't get as much, and I diluted that with a normal salt solution, and that was injected into the other guinea pig.

Q. What happened to the guinea pig after you injected the venom?

A. The pig gave a jerk, and gave a squeal of pain, and there was a marked twitch as some poison affected the creature, and then after a while the little guinea pig would twitch, and in about twelve minutes would fall over, and after ten minutes try to rise, and was not able to do so and gradually the respiration began to slow up, as did

the beat of the heart, and in 29 minutes all evidences of life had passed.

Q. Did you thereafter perform an autopsy on the body of the guinea pig?

[fol. 243] A. Yes, the next day.

Q. What did you find?

A. The whole region where the injection had occurred, all of the abdominal wall had been accumulating a black and blue, and then when we went into the abdominal cavity, the intestines were in sharp contraction, and also the intestines being blackish, and discolored, and the stomach the same way. The lungs show a large amount of blood in them, and the heart was down; something caused a sharp contraction of the heart.

Q. Did you form an opinion as to the cause of the death of that guinea pig?

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A. The case of the guinea pig, in the absence of any other kind of poison, was rattlesnake venom. This guinea pig had the weaker venom solution, although he had the same grade of pain, and the same series of convulsions, and in 20 minutes they were able to get him up from time to time, and finally in one hour and nine minutes it was dead.

By Mr. Williams:

Q. Did you perform an autopsy on the second guinea pig?

A. Yes, sir, I did.

[fol. 244] Q. What opinion did you form?

A. The same as in the first.

Q. What opinion did you form in the second case?

Mr. Clark: The same objection.

The Court: You may answer.

A. It was from the effect of the result of the rattlesnake venom.

Mr. Williams: You may cross-examine.

Cross-examination.

By Mr. Clark:

Q. Dr. Boehme, are you engaged in general practice, or do you pursue some specialty?

A. Diagnosis generally.

Q. And in the field of diagnosis very great changes have taken place in recent years?

A. Yes, sir—I didn't get that? In the value of what?

Q. The value of diagnosis have undergone great change?

A. Yes, they are changing every hour.

Q. I assume that you are concerned principally with bacterial examinations, and making X-ray examinations?

A. I try to get hold of everything that I can get hold of in making diagnoses.

Q. Have you ever devoted any special study to the study of toxicology?

A. Yes, I did.

[fol. 245] Q. Was that during your student days, or graduate work?

A. Both.

Q. How much time did you spend in the study—may I ask what medical school you attended?

A. Cornell University, Medical College.

Q. And how much of the time of your course there was devoted to the study of toxicology?

A. I not only took the regular course, but I took special examinations with the Doctor there, and later with Dr. Schultz, and I did some work with him.

Q. That leaves my question unanswered. How much did you take, months, years, or what?

A. Months, years or how much time, I cannot valueate it. I was in medical school six or eight hours a month in Mexico.

Q. During the whole course?

A. During the last three years, and thereafter, and I did considerable work with the authorities. Incidentally, my father was in the drug business in New York, and he was a medical examiner—

The Court: When you refer to "medical examiner", you refer to an office similar to our office of Coroner here?

A. Yes.

The Court: You may proceed.

By Mr. Clark:

Q. That was how long ago, Doctor?

A. That concluded in 1921, when I came out here.

Q. Those examinations have been a frequent instance of [fol. 246] your work since then?

A. Yes, I do a lot of examination regarding various poisons, We have lead poisons, and those pass often through my office.

Q. Well, in this field, you have had very little poisoning from snake bites?

A. Only bitten by one, and have seen one bitten up here in a canyon.

Q. Now, there are many species of snakes?

A. There are two great varieties. The Coachilla, that is the rattlesnake, and the copperhead of the Mexican, and the little coil snake there.

Q. And you have several species of moccasins?

A. Yes, we have.

Q. So that you have altogether in North America cases of about 20 different species of snakes?

A. More than that.

[fol. 247] Q. Now, you have other poisonous reptiles outside of snakes, haven't you?

A. Yes, sir.

Q. And what are those?

A. Yes. We have tarantulas.

Q. You have tarantulas and various species of scorpions?

A. Yes, sir.

Q. Now, snakes and spiders and scorpions, they spread their venom widely different, don't they?

A. In a general way they are somewhat similar. They are alkaloidal in quality.

Q. Well, an alkaloidal condition is always present in the snake?

A. Yes, sir.

Q. Well, you have many alkaloidal poisons that are in snakes oftentimes?

A. Yes.

Q. And the alkaloidal poison, affects human beings very much along the same lines as any other, doesn't it?

A. Well, each one has his own particular action.

Q. For instance, is there any very marked difference between the manner in which the venom of rattlesnakes affects a person and we will say the venom of a Upland Moccasin?

A. Not especially.

Q. Is there any marked difference in which the venom in a rattlesnakes affects a person and the manner in which [fol. 248] the venom of a gila monster affects a person?

A. Not a great deal.

Q. Is there a great deal of difference between a rattlesnake and the tarantula?

A. No, the tarantula is more irritating. It gives you some cerebral irritation that you don't get from the other.

Q. Well, the alkaloidal are more irritating than the others?

A. Yes, sir.

Q. It is a matter of degree, however?

A. Yes, sir.

Q. Now, is there any marked difference between the fangs of the rattlesnake and the venom of the so called black spider?

A. Locally there is. Sometimes you do not get all these material changes and you don't get the same kind of bite.

Q. You don't get the same kind of puncture because the spider has not the fang, is that it?

A. It is.

Q. Of course, you know with relation to the body you examined, whether before death that person had gastric disturbance or not?

A. No, but the manifestations were not like that.

Q. If you knew that that person had suffered a direct disturbance shortly before death, would you take that into consideration in determining whether there had been a snake bite?

[fol. 249] A. Surely, everything has to be taken into account.

Q. Now, is it true, Doctor, that all the poisonous snakes have heads that are broader than the non-poisonous ones?

A. It is not true. The rattlesnake group have a triangular head. Other varieties of snakes may have a different head. Take any gopher, they don't have a wide head.

Q. But the rattlesnake does have, however, a head that is much broader than the harmless gopher snake?

A. That is correct.

Q. Moccasin also has a wide head?

A. Yes, sir, the Moccasin also has a wide head.

Q. And a gila monster likewise has a wide head?

A. Yes, he does, but—

Q. Is it true, Doctor, that the width of those heads is occasioned by the presence of the poison glands?

A. No, it is merely an anatomical difference.

Q. About how much venom—strike that out. About how large were these snakes that you examined?

A. It was four foot long and the largest about five.

Q. And did you make any observation for the purpose of determining how much venom each of these snakes secretes at the time?

A. The particular snakes?

A. Yes.

[fol. 250] A. No, we could not. The snakes had been placed in a very large box through the day, and people bothered them during the day, and there was a considerable venom on the glass, and in the one case the snake was in such a condition that we didn't know how much we got there, and the other snake, one of the fangs was completely broken and the other fang was in poor condition so that I couldn't tell you definitely just what the snake would carry, or could carry.

Q. Well, it is true, if I might use such an expression that your snake has his poison practically inside of his body and manufactures his own poison, doesn't he, Doctor? In other words, he consumes certain foods, a part of which enter into the production of the poison?

A. That is so.

Q. In other words, he doesn't go out and pick out the poison all ready for his use?

A. He is his own manufacturer.

Q. So that the quantity of poison that it may have may depend to some extent at least on the quantity of food that he eats, isn't that true?

A. Well, I will tell you what it depends upon. It depends on the type of food he eats, partly, but whether he was bit a very short time before that or not, the rattlesnake will carry about two hundred and fifty million milligrams in its fangs and some as high as six hundred million.

Q. Suppose we place them into spoonfuls.

[fol. 251] A. More of a dishpan full, I think.

Q. And the fang, and the poison glands lie back of the fang, I take it?

A. Yes sir, they are back of the fangs.

Q. And they are open, and the poison is ejected?

A. Yes, sir, and they are covered with a membrane to protect the venom.

Q. I think the ejection of the poison is rather an automatic process, depending upon the pressure?

A. After a good bite, the two come together like this. A snake does bring its lower jaw down in position——

Q. And then the poison actually ejects itself?

A. Yes, sir.

Q. And have you ever observed, Doctor, how many times a snake bites before the poison is entirely exhausted?

A. No, I have not.

Q. Well, it is true, isn't it, that the supply is limited?

A. Yes, the supply is limited and the snake has to regenerate it.

Q. And then a period of some time is required to replenish it.

A. Some period.

Q. How long a time is required?

A. I do not know the time, personally, from observation, but from 8 hours on.

Q. Up to two weeks, isn't it?

[fol. 252] A. Yes, two weeks sometimes.

Q. Isn't it a fact that snakes exist for a length of time without taking food?

A. That is understood in the hibernating period.

Q. Is that true at other times other than in hibernating period?

A. I understand they do live without at times.

Q. Your rattlesnake doesn't masticate his food like we do.

A. All snakes eat it and then it is carried in the digestive track and there it has an absorption.

Q. And that period of absorption may take a long time?

A. Of course.

Q. Of course, you had no knowledge yourself as to what the condition of these rattlesnakes were during the early part of August of last year?

A. No, I didn't know.

Q. You cannot say during the early days of last August whether these snakes had any poison in their poison sacks?

A. It is seldom——

Q. So all you have to depend on is your guess.

A. I think Mr. Williams asked me, called me up to know if I knew anything about the snakes.

Q. And these examinations that you made were made at the request of Mr. Williams?

A. That is correct.

[fol. 253] Q. And that was for the purpose of making an examination so that you could testify in this case?

A. No, originally, it wasn't anything of the sort.

Q. Pardon me; I think you have answered the questions, Doctor. The call that you had from Mr. Williams was before you had seen this body of which you spoke?

A. Yes, sir.

Q. And arrangements were then made for you to see the body before you saw the snakes, were they not?

A. Yes, that is correct. I didn't know whether I was going to see the snakes.

Q. How long was it after you saw the body that you did see the snakes?

A. It was two days thereafter.

Q. Now, without stating anything that had been said by Mr. Williams, when you saw the body, you knew the purpose for which Mr. Williams wished you to examine it, didn't you?

A. Well, surely, I knew why I was there.

.

[fol. 254] Q. Dr. Boehme—is that the way you pronounce it?

A. Anyway you like. I have quit arguing. Boehme is correct.

Q. Thank you. Now, Doctor, the guinea pigs that you say you used, about how much did they weigh?

A. One weighed 502 grams, and the other 408 grams.

Q. That would be how much in pounds and ounces?

A. It would be about two and a half pounds, and the other a little less than that.

Q. Well, we will say that that would be approximately correct?

A. Yes.

Q. The body that you saw was the body of a woman weighing 125 or 130 pounds, wouldn't you say?

[fol. 255] A. That is what I was told. I didn't weigh her, or anything.

Q. Naturally it would take a much larger amount of poison to kill a person of that size than it would to kill a two and a half pound guinea pig, wouldn't it, Doctor?

A. Certainly.

Q. You drew no inference from the death of the guinea pigs that either of those snakes could have inflicted a

would that would have killed this woman, did you, Doctor?

A. May I have that—

Q. I will reframe that. You used the poison on the guinea pigs solely for the purpose of ascertaining the strength of the venom?

A. Yes, to determine—

The Court: There was one question that was not asked the Doctor by Mr. Williams, at least I don't recall it, as to the amount of the injection into the guinea pigs. I don't think that was given. It might be a factor in your question.

By Mr. Clark:

Q. How much poison did you give each guinea pig?

A. Of the pure virus in the large guinea pig there was approximately 10 drops, 10 minims. With the mixed salt solution, approximately the same amount.

Q. Did you use the pure virus on one guinea pig, and the mixed virus on the other?

A. The virus with the normal salt solution, yes.

[fol. 256] Q. That simply means that a definite quantity of virus was put in what you call a normal salt solution?

A. It was not a definite amount, because we had so much difficulty in getting the virus from both the snakes that as much as I could obtain I used merely as a gross test to determine whether this virus was fatal in its action.

Q. When a snake bites a person the quantity of poison injected into the person depends upon a multiplicity of conditions, doesn't it?

A. Oh, yes.

Q. When the bite is upon a hand, toe or finger, it is not nearly so dangerous as when it is on one of the larger, fleshier parts of the body? That is true, isn't it?

A. That is true.

Q. And the wound that you thought was a snake bite was on the toe, wasn't it?

A. It was on the left great toe.

Q. Would you mind telling us which part of the toe it was on?

A. Assuming this was the toe, the base of the toe here, it started about the middle and came toward what we call the inner aspect of the toe.

Q. Would it be on the part of the toe that would be on the ground when the person was standing up?

A. That is correct.

Q. In your study of snakes, and snake poison, you have [fol. 257] observed with some degree of care the habits of snakes, particularly with regard to their method of ejecting the poison?

A. The method of ejecting the poison?

Q. Yes.

A. Yes.

Q. The venomous snake usually coils himself to strike, does he not?

A. Yes, most of them do.

Q. And the fangs of the rattlesnakes, at least, are set in the upper part of the mouth, and curved?

A. They lie like this. They are attached to a small bone, and when they are ready to strike the muscle pulls the piece of bone forward, and we have the two fangs carried forward. As a general rule there is a slight curve backward in the fang.

Q. And your rattlesnake always keeps his belly to the ground, that is, he never lies on his back, does he?

A. Not that I know of.

Q. So that by reason of those conditions your rattlesnake always strikes downward, and never strikes upward, isn't that true?

A. No, I wouldn't say that. I have seen rattlesnakes in boxes coiled about each other so that it would be quite possible for a snake to strike from any position.

Q. You never did see them strike from any position other [fol. 258] than—

A. I never saw it, but I have seen them crawling all over each other.

Q. When they were crawling over each other they weren't striking, were they?

A. Well, I wouldn't care to put my arm in.

Q. Well, they weren't striking, were they?

The Court: You mean they weren't in the act of striking?

A. No, they weren't in the act of striking.

By Mr. Clark:

Q. I wonder, Doctor, if you could give us a little drawing of this bite that you think was a snake bite?

A. I would be very glad to.

Q. I would be very glad to hand you a paper and pencil.

Mr. Williams: Can't we put it on the black board, so that the jurors can see it?

Mr. Clark: Can you do it on the black board, Doctor?

A. There is not very much to it. I don't know whether I will do the lady's toes justice.

Q. We understand that it is merely illustrative. Your artistic ability, or lack of it, will be no reflection upon your medical ability.

A. This is looking up at the great toe.

Q. We are looking at the bottom of the foot?

A. Yes. The scar ran across from here. The top part was about the middle of the great toe, and then there was [fol. 259] this little thing, the whole business about a quarter of an inch in length.

Q. About a quarter of an inch?

A. Yes.

Mr. Clark: Which drawing, if your Honor please, we offer in evidence as a part of the cross examination of the witness, and as illustrative of his oral testimony.

The Court: Mark it Exhibit A.

Mr. Williams: No objection.

Mr. Clark: If there is no objection I will hand it to the jury for their inspection.

The Court: You may do so.

(Exhibit handed to the jury).

Mr. Clark: In order that there may be no misunderstanding, Doctor, in looking at this picture we are looking at it as though we were standing underneath the foot looking at the bottom?

A. Yes.

Q. Counsel thought that that was not quite clear.

A. Yes.

Q. Doctor, this body was in an advanced state of decomposition when you saw it, was it not?

A. Certain parts were. Some were not. The parts about the face were. The body we didn't examine, but it was remarkable the state of preservation of the extremities on both sides.

[fol. 260] Q. The wound on the toe was very discernible at that time, wasn't it?

A. It was covered by a sort of brownish material, a mold, which Dr. Wagner removed, and the scar was found.

Q. Was there a portion of the skin and flesh which had been so far decomposed that it had to be removed before you could see the scar?

A. No, there is a kind of mold forms upon the body after death, and this mold was removed by Dr. Wagner with a knife, and then the actual skin was there underneath it, with a scar running across it.

A Juror: Your Honor, I believe the way he described that, from looking at it, that the toe is on the wrong side of the foot.

Mr. Clark: I am rather inclined to believe that the juror is right. However, as it is merely for illustrative purposes, it will serve the same thing. I think that is all with this witness.

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[fol. 261] CHARLES H. HOPE, resumes stand.

Cross-examination.

By Mr. Parsons:

Q. Mr. Hope, when this man said to you that he wanted you to obtain some rattlesnakes, so that they could be used to kill a person, and he would pay you for doing this, you immediately set out, within a day or two, to obtain these rattlesnakes, is that right?

A. Yes, sir.

Q. For a consideration, is that right?

A. Yes, sir.

Q. You didn't go and inform the police or authorities that this man had asked you to obtain these rattlesnakes that some person might be killed, did you?

A. I did not.

Q. How old are you?

A. 37 years old.

Q. And you have known Mr. James here for some six or seven years, have you?

A. Right.

Q. And during that time, until recent events, at least, you have been on fairly friendly terms, have you?

A. Yes.

Q. And you went to his place of business here in the City of Los Angeles, did you?

A. I have.

[fol. 262] Q. And you were a patron of his, is that right?

A. Right.

Q. And he acted as your barber, is that right?

A. Yes, sir.

Q. And how frequently, prior to this occurrence, would you see Mr. James?

A. Well, that would be hard to say. It would vary. I would say once every two weeks, when I was in town. When I was in business in Pomona, it would be every two or three months.

Q. That is right, you were in business in Pomona?

A. Yes.

Q. What business were you in there?

Mr. Williams: Object to that as immaterial.

The Court: I think it is immaterial.

Mr. Parsons:

Q. What has been your business for the last year prior to this occurrence?

A. Building maintenance.

Q. And you were following that right along, were you, up until June, 1935?

A. Yes, sir.

Q. And prior to June, 1935, had you ever received any money from Mr. James?

A. I had borrowed money from him a time or two, and repaid it.

Q. Your relations were such that if you——

[fol. 263] A. I, however, gave security for this money.

Q. You gave security?

A. Yes.

Q. But you did negotiate a loan with him, is that right?

A. Yes, sir.

Q. How much was that?

A. I think it was \$5.00.

Q. And that transaction was terminated all right, was it?

A. Yes.

Q. Now, you said that you met Mr. James in June, is that right, of 1935?

A. I saw him in June.

Q. And that is when you first had this conversation?

A. It is.

Q. Pertaining to this matter?

A. Yes, sir.

Q. Now, this conversation was held outside of his barber shop, is that right?

A. Part of it.

Q. Well, was the conversation that you related here held outside of the barber shop?

A. Part of it. I also said part of it was related in the barber shop.

Q. You also said that?

A. Yes, sir.

Q. Now, you testified here yesterday, page 137, did you [fol. 264] not, in substance: "He went outside of his barber shop"?

A. I did.

Q. Now, what portion of the conversation was held in the barber shop, and what portion outside?

A. The portion held in the barber shop was to learn if I would get the snakes, and if I knew anything about them.

Q. What did he say to you inside the barber shop?

A. "Do you know anything about rattlesnakes?"

Q. Wanted to know if you knew anything about rattlesnakes?

A. Yes.

Q. What else was said in the barber shop?

A. If I could obtain some for him.

Q. What else was said?

A. That is all that was said that day.

Q. That day?

A. Yes, sir. I told him I would find out if I could get some.

Q. Who was there at that time?

A. I am unable to state all the people that were there. The two barbers were there, if I remember correctly, and a patron or two. I think possibly his niece was there; I wouldn't say for certain.

Q. At that time did he go outside of the barber shop with you?

A. Not on that day, no sir.

[fol. 265] Q. Now, did you have a subsequent conversation with him?

A. Yes, sir, the next time I was in the barber shop.

Q. How long after that?

A. It was a very few days.

Q. And what was said then?

A. He wanted to know if I found out anything about snakes. I told him "Yes", I could get him some.

Q. And that was some two or three days later, is that right?

A. I would say so, yes.

Q. Was that inside of the barber shop, or outside?

A. That was inside of the barber shop.

Q. Do you know who was there present?

A. No, sir, I don't.

Q. And where were you working at that time?

A. Where was I working at that time?

Q. Yes.

A. I was working at the Corporation Building.

Q. The Corporation Building; and where were you living?

A. I was living on Hope Street.

Q. Whereabouts on Hope Street?

A. I don't know the name of the street.

Q. Can you give us the block you were in?

A. It was between 9th and 10th, on Hope.

Q. In one of the apartment houses there?

A. Yes.

[fol. 266] Q. You don't know the name of the place?

A. No.

Q. What did he tell you that he wanted these rattlesnakes for, if anything?

A. He told me that he had a friend that his wife had been annoying him, and keeping him broke, and he wanted these snakes to kill her, which I didn't believe.

Mr. Parsons: I move to strike out the latter part of it. Just state the conversation, please, sir. What was the conversation? What did he say to you?

A. If I would get these—now, wait a minute; you have got me all mixed up.

Q. What was that you just said?

A. I said you had me a little confused there, a little mixed up.

Q. When you had this conversation with reference to these snakes, you now say it was on the second conversation that he said the object of your purchasing the snakes, is that right?

A. I think that is correct, yes.

[fol. 267] Q. Now, what did he say to you with reference to the object of procuring these snakes?

A. To procure them for a friend of his who was going to kill his wife.

Mr. Parsons: Now, I direct your attention to your testimony given on June 24th, in this Court, page 137. I will ask you to read lines 22 to 25, to yourself.

A. No, that is not what I said.

Q. The witness has said "No, that is not what I said." Just read it, and then don't say anything until I ask you a question, please. Have you now read that?

A. Yes.

Q. I will ask you if here in this very courtroom you didn't testify as follows: "A—He went outside of his barber shop and said he had a friend of his wife's, that had been annoying him quite a bit, and he was going to kill him and wanted to get some rattlesnakes, and laughed about it."

A. That is not, I believe, what I said.

Q. So that the reporter was in error in taking this down in this manner, is that right?

Mr. Williams: Just a moment. That is argumentative.

A. There is an expression of men and wives in there [fol. 268] that was perhaps misunderstood.

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[fol. 269] Q. Now, you testified before the Grand Jury, did you not?

A. I did.

Q. Now, I am directing your attention to page 2 of your testimony given there, and I will ask you to read lines 20, 21 and 22, just to yourself, please, sir. Just lines 20, 21 and 22, and when you have finished you will let me know.

A. Yes.

[fol. 270] Q. And now, before the Grand Jury, I will ask you if you didn't state this, this was the conversation, "I

have a friend who has a wife that is keeping him broke and he wants to kill her. He is going to kill her with a rattlesnake." You so testified before the Grand Jury, did you not?

A. That is correct.

Q. Now, you testified here that Mr. James said to you, "If you will get me some rattlesnakes I will give you \$100.00". Is that right?

A. Yes, sir.

Q. That was the conversation?

A. I was to be paid \$100.00.

Q. Now, you testified here, page 137 of the reporters' transcript in this very court, I will ask you to read line 26 to yourself, starting with the words, "He said". Have you finished reading that?

A. Yes, sir.

Q. And then, read line 1 on page 138.

A. Right.

Q. Now, I will ask you if you didn't testify in this courtroom, "He said, 'If you will get me some rattlesnakes I will give you \$100.00.'"?

A. Correct.

Q. And now, upon that subject you testified before the Grand Jury referring to your conversation alleged held with Mr. James, page 2, Mr. Williams, of the Grand Jury transcript, line 25, we will start in with the words, "He [fol. 271] said". Will you read through line 25 and through line 26?

A. Yes, I have read it.

Q. Now, before the Grand Jury, in response to a question, you said this, did you not? "He said this man will give you \$100.00 to buy these rattlesnakes". And now, did you so testify before the Grand Jury?

A. I believe I did.

.

[fol. 272] Mr. Parsons:

Q. Now, Mr. Hope, after you had had this conversation you set out to obtain these snakes, is that right?

A. I did.

Q. And where did you go first?

A. To Long Beach.

Q. To Long Beach, and who did you see there?

A. Mr. Kirby.

Q. And what did you do, obtain a snake or snakes?

A. Obtained three snakes.

Q. What did you do with them?

A. Kept them in my apartment for a couple of days until I got a chance to see Mr. James. He gave me the money for them and I delivered them to his house in La Canada.

Q. When did you next see James after that?

A. Oh, the next time I saw him to actually see him, if that is the question?

Q. Yes. Where did you see him?

A. I saw him in his barber shop, I suppose about two weeks afterward.

Q. Now, when you brought these snakes back you say you took them out to Mr. James' house?

A. Yes.

[fol. 273] Q. La Canada?

A. Yes.

Q. What did you do with them?

A. Set them in the garage.

Q. Was Mr. James there when you delivered them.

A. He was.

Q. Do you recall what day it was?

A. No, sir, I don't.

Q. Can you give us some approximation?

A. Oh, it was around the 5th or 6th of July. I was getting ready to move and had to get them out of my apartment.

Q. And was there any person there when you brought the snakes there other than Mr. James, that you saw?

A. No, sir.

Q. Was it night time or day time?

A. It was in the evening.

Q. And in what kind of a receptacle did you have the snakes?

A. In a small box that had a glass in front of it.

Q. A small box. How large was the box?

A. Well, I couldn't say exactly. Perhaps Mr. Kirby there could tell you. He had the box.

Q. Well, what is your best judgment about it?

A. I would say the box was about that long and about that deep.

[fol. 274] Q. About 18 inches long and about 10 or 12 inches high, is that right?

A. That is right.

Q. And how wide?

A. About 7 or 8 inches wide.

Q. And had a glass top on it?

A. No, sir, it had a glass side on it.

Q. How did you get the snakes in or out?

A. Mr. Kirby put them in.

Q. How did he put them in? What did he open up to get them into the box?

A. He opened up a large pen I guess they call it. I don't know what they call it.

Q. Referring to the box, what portion of the box did he use to put the snakes inside of the box?

A. He put them inside of the box and shut the lid.

Q. Then shut the lid?

A. Yes, sir.

Q. How big was the lid?

A. It covered the box.

Q. The whole side?

A. Covered the top of the box.

Q. And that is the method of conveyance that you used to deliver them to Mr. James' residence?

A. Yes, sir.

Q. And it was some two weeks or so after that before you [fols. 275-276] saw Mr. James again, is that right?

A. Yes, sir.

Q. Now, you stated that you said to Mr. James that you had to go to the desert to get these snakes and that he told you if you had to go out on the desert to get him snakes, that he would defray the expenses. Did he tell you that?

A. He said that he would see that I had the money to defray all expenses, yes, sir.

Q. Now, when you testified before the Grand Jury, did you say anything about Mr. James telling you that if you had to go out on the desert to get these snakes he would defray all of the expenses?

Mr. Williams: Just a minute; that is objected to on the ground there is no proper foundation laid.

The Court: Sustained.

Mr. Parsons: Have you read the testimony given by yourself before the Grand Jury?

A. Part of it.

.

[fol. 277] Q. Now, after you had met this man a second time, did you meet him again?

A. What man?

Q. Mr. James?

A. Yes, sir. I moved out to his house.

Q. Moved out to his house and moved in, is that right?

A. Yes, sir, at his suggestion.

[fol. 278] Q. Well, you went out there willingly, didn't you?

A. Surely.

Q. And he told you he wanted you to do a little work out there, is that right?

A. Yes, but the work didn't materialize to be very much work done.

Q. Did you do any work out there?

A. I fixed one chicken coop, tightened a little wire, and raked around a clothes line, I believe. The rest of the time he brought me to town every morning with him.

Q. But you stayed out there at the home, did you not?

A. At night time.

Q. How long did you stay there?

A. About four or five days.

Q. Was Mrs. James there at all during that time?

A. Two days.

Q. Two days she was there. And then she left to make a little trip, is that right?

A. Right.

Q. And when was it that you left there?

A. I left there the day after Mrs. James left, I am sure.

Q. And do you recall when it was she left?

A. No, I don't know the exact day. I know there was a convention. She went to a convention in Long Beach, so I was told. Mr. James' sister was there at the time and I was there one morning with Mr. James and his sister. I left that day.

[fol. 279] Q. Which sister was that?

A. Mrs. Murphy.

Q. Mrs. Murphy?

A. I think that is her name.

Mr. Parsons: Stand up, Mrs. Murphy. She just stepped out. In any event, who was there besides Mrs. Murphy, Mr. James and Mrs. James during your stay?

A. One Sunday morning Lois was there.

Q. That is the niece?

A. Yes, sir.

[fol. 280] Q. She came over, and you folks all had breakfast together, is that right?

A. I wasn't there when she arrived.

Q. Now, during the time that you were out there you stayed at the house, and you had some of your meals there?

A. I had breakfast there.

Q. And you did some work out in the yard, is that right?

A. A little work.

Q. And then when did you see Mr. James again?

A. I would say about the middle of July.

Q. And where was that that you met him?

A. In his barber shop.

Q. And did you have any conversation with him then?

A. Yes, he told me the man was dissatisfied with the snakes, that he and his family had been to Ocean Park where there was a snake pit conducted, to go down there and see what I could find out about the snakes, or better yet, what was I doing that day. I told him nothing. He said, "Well, I will go down with you", and we went to Ocean Park.

Q. And what time did you leave?

A. Well, I don't know.

Q. Can't you tell us about what time of day it was?

A. No, I can't.

Q. Was it morning or afternoon?

A. It was in the afternoon, I would surmise, because I don't believe they are open in the morning, because I was [fol. 281] down there the next morning, and they weren't open.

Q. And you left for Mr. James' barber shop, is that right?

A. That is correct.

Q. Did you see Mr. James, and have this conversation with him in the barber shop?

A. I had part of it in the barber shop.

Q. And who was there, if anybody, besides yourself and Mr. James?

A. That I couldn't tell you.

Q. And were there any of the barbers there?

A. Yes.

Q. And some patrons?

A. That I don't know.

Q. How long were you in the shop before you and Mr. James set out on this trip?

A. Oh, long enough to get a haircut; I would say 15 or 20 minutes.

Q. And did you and Mr. James walk out together?

A. I don't know whether we did, or not?

Q. Did you meet after you left the shop?

A. We met, or walked out together; I don't know which.

Q. Where did you meet?

A. I don't know.

Q. Well, where did you go after you left the shop?

A. We went to Ocean Park in his automobile.

Q. Where did you get the car?

[fol. 282] A. At the Savoy Auto Park, 8th and Grand Avenue.

Q. Did you park the car in Ocean Park in a public park, or upon the street?

A. We parked it in a parking lot.

Q. And do you know where that parking lot is?

A. I think I do.

Q. Where?

A. I could take you to it. I don't know the streets in Ocean Park.

Q. You don't. Now, did you and Mr. James then go up to some snake pit?

A. We did.

Q. How long were you there?

A. I should say we were there about an hour and a half, or two hours.

Q. Did you have any conversation with anybody?

A. Well, he had most of the conversation.

Q. Well, what did he say?

A. I couldn't tell you all that he said. One thing I heard him say was he said he bet the man \$20.00 there wasn't a poisonous snake in the pit.

Q. And that portion of it you heard, is that right?

A. Yes, sir, that is right.

Q. Was it along toward evening when you left?

A. I don't recall what time of the day it was. I would say in the late afternoon, middle of the afternoon sometime.

[fol. 283] Q. Four or five o'clock.

A. Before five o'clock, yes, because I was back in Los Angeles.

Q. And when you and Mr. James returned to Los Angeles, did you both return to the shop, or did he let you out some place?

A. I don't recall whether I got out downtown at that time, or whether he was going home. If he was going home, he drove me out Vermont Avenue.

Q. Now, who did you see down there at the snake pit?

A. The man that owned it.

Q. Do you know his name?

A. No, sir.

Q. Is he here in court?

A. He is, or was. I don't know whether he is now, or not.

Q. Do you know what they call him?

A. No, sir.

Q. Did you ever hear him addressed down there by any name?

A. I think they called hi. Mike.

A. And what did you do after that?

A. What do you mean, the same day?

Q. Well, you left Mr. James that evening, I take it, and then you didn't see him any more that day, is that right?

A. That is right.

Q. When did you again see Mr. James?

A. The next day.

[fol. 284] Q. Where did you meet him?

A. I met him at the barber shop, and he gave me a note to get his car.

Q. You went down to the barber shop and procured a note from Mr. James, and went over and procured his automobile at the park, is that it?

A. That is right.

Q. And then where did you go?

A. I went to Ocean Park.

Q. What did you do down there?

A. I left one snake, and got another one.

Q. You left one snake and procured another one, is that right?

A. Yes, that is right, the one that Mr. James had designated the day before that he wanted.

Q. That is the one that you picked out, is that right?

A. As near as I can remember, yes. I asked this gentleman if this was the snake they were talking about, and he said "Yes", it was.

Q. How did you bring the snake back? In what kind of a receptacle?

A. In a wooden box, with a glass top.

Q. And you at that time didn't relate to any authorities that you were procuring a snake for a man who had stated that it was to be used for the purpose of killing somebody, did you?

[fol. 285] A. I think I answered that question a while ago.

Q. I mean at this time, if I may have the answer, without getting into any argument. If I may, if your Honor please, have my answer.

A. There was nothing said about killing anybody with this snake.

• • • • •

Mr. Parsons: Now, at no time during your going to these various places to procure snakes did you ever relate any of the circumstances to any official or officer, did you?

A. No, sir. It is not against the law to procure a rattlesnake; I found that out.

• • • • •

Mr. Parsons:

Q. At any time during the time that you had these conversations with Mr. James about these snakes, at any time were you told that the snakes were for the purpose of being [fol. 286] used for any other purpose than to kill a human being?

A. Yes, sir.

Q. And what were you told?

A. I was told at Ocean Park to tell the man that I had lost money in a poker game, and I was going to regain it by proving that these snakes were poisonous.

Q. And that was what Mr. James had told you to tell the snake man, is that right?

A. Absolutely; yes sir.

Q. And subsequently was some other story told to you?

A. It was, two of them.

Q. And when after you returned from Ocean Park with the snake which had been indicated to you, as you say, when did you next see Mr. James after that?

A. You mean after I had delivered the snake to him?

Q. Well, when did you deliver the snake?

A. That evening.

Q. Where did you deliver it?

A. In his barber shop.

Q. He got in the car and went on home, and you went on home with him, is that right?

A. I don't know where he went.

Q. Where did you leave him?

A. I gave him the snake.

Q. At the barber shop?

A. Yes.

[fol. 287] Q. He didn't drive you to Beverly and Vermont?

A. No, not that time.

Q. After you delivered that snake to him at the barber shop, when did you next see him again?

A. I used to go in there for a haircut and a shave every couple of weeks.

Q. Now now, had he given you any money during this time?

A. He gave me \$100.00 the night I delivered him this snake from Ocean Park, and he gave me \$20.00 when I went to Long Beach to get the snake.

Q. Now, these snakes that you purchased, you paid about \$1.50 or \$2.00 for them, didn't you?

A. It varied. The first I paid \$5.00 for them.

Q. What did you pay for all of these snakes?

A. About \$12.00.

Q. So that up to that time you were about \$108.00 ahead of the game, is that right?

A. No, I wouldn't say that. You have to buy gasoline, and feed yourself, and various other sundry items.

Q. Now, you were using his automobile, were you not?

A. That is true. I also bought the gasoline and oil for it.

Q. Did he ever give you any money for gasoline?

A. Not additional to that.

Q. He never at any time gave you any money for gasoline?

A. No, sir.

[fol. 288] Q. During these trips and excursions?

A. I imagine I was supposed to take it out of this money that he gave me.

Q. Now, after that occurrence when did you next see Mr. James again?

A. I went in there every so often to get a haircut and a shave. I don't remember the exact date that I saw him the next time.

Q. Did you see him on several occasions?

A. Several occasions, yes.

Q. When did you, if ever at all, discuss snakes with him again?

A. On Saturday, the 3rd day of August.

Q. Saturday, the 3rd of August, and where was that that you had that conversation?

A. That was in his barber shop.

Q. And what was said there between you?

A. I don't know whether it was in his barber shop; I don't remember whether it was in his barber shop, or where it was, or whether he went outside, but that was the day he told me to go over to Snake Joe's. Pardon me; may I change that?

Q. Yes, if you wish to.

A. I saw him Friday, and he drove to Pasadena with me, and waited in the car while I went over to inquire for this [fol. 289] man, and he wasn't home. I was told that I could see him the next afternoon, which would be Saturday and we came back to Los Angeles.

Q. And what time did you return here?

A. I don't know; it was about—I would say around 4 o'clock.

Q. Well now, when you met Mr. James and started to Pasadena, you met him at the barber shop?

A. Yes, at his barber shop.

Q. Did you go in the shop?

A. Well, I suppose I did. I generally did.

Q. Well, do you recall who was there on that particular occasion?

A. No.

Q. And then you and he left and obtained the automobile and went to Pasadena, is that right?

A. That is right.

Q. In his car?

A. In his car.

Q. And did you get back before dark?

A. Yes, sir.

Q. Did you go back to the shop?

A. I don't know where he went.

Q. Where did he leave you at?

A. He left me on Vermont Avenue.

Q. Left you on Vermont Avenue?

A. He came into Pasadena around—oh, through Glendale.

[fol. 290] Q. Did you acquire a snake on that occasion?

A. No, sir.

Q. You didn't make any purchases?

A. No, sir.

Q. Neither one of you?

A. No, sir.

Q. And when did you next see him?

A. The next day.

Q. You saw him the next day?

A. Yes, sir.

Q. Where did you see him?

A. In the barber shop. He gave me the key to his car to go to Pasadena to get the snakes that he was talking about before.

Q. Did he give you any money?

A. Yes, \$5.00.

Q. And did you go to Pasadena?

A. Yes, sir.

Q. Did you buy a snake?

A. I bought two snakes.

Q. And did he say anything about the snakes?

A. He certainly did.

Q. What did he say?

A. He said, "I want some real fighters. These snakes you have got in here are not so good." He said, "Tell this man over here they are going to fight chickens and dogs."

[fol. 291] Q. And did you believe that the purpose of securing these snakes had now switched from killing a human being to the purpose of fighting dogs or chickens?

A. That sounded the most logical thing to me.

Q. It sounded the most logical thing to you?

A. Yes, sir.

Q. And did you have any discussion with Mr. James further upon that point?

A. What point?

Q. Upon the question of the object of procuring those snakes?

A. Please state your question more clearly.

Mr. Parson: Strike it out.

Q. Did Mr. James say anything to you about the purpose for which you were to obtain these snakes?

A. Not for what I was to obtain them for, no sir.

Q. As a matter of fact, the only time that he ever told^e you what the snakes were to be obtained for was in the first instance, when he told you that the snakes were to be bought for the purpose of killing a fellow human being, isn't that right?

A. That was supposedly to have been told to me, and to him.

Q. But that was the purpose for which you originally set out, isn't that right?

A. Yes.

Q. Then, later, on two separate occasions he merely told [fol. 292-309] you to tell people what you were obtaining them for?

A. The first time I was to tell the party that I got them from that they were for experimental purposes.

Q. Now, after you returned from Pasadena, did you say you saw him the next day, is that right?

A. Yes.

Q. And about what time was it when you saw him?

A. About 12:30.

Q. And that day was what?

A. Sunday.

Q. Sunday?

A. Yes, sir.

Q. And where did you see him then?

A. At his home at La Canada.

Q. You went out there, did you?

A. Yes, sir.

Q. And where did you find Mr. James?

A. Mr. James came out and met me in the driveway.

Q. And how long were you there?

A. I was there for almost—between 12:30—well, about 1:15 or 1:20 or possibly 1:30.

[fol. 310] By Mr. Williams:

Q. Mr. Hope, I direct your attention to the transcript of the testimony of this case, Page 151, the answer begin-

ning on Line 8, and ending on Line 13, and ask you to read that entire answer, and when you have finished reading it, just let me know that you have finished.

A. I have finished.

Q. Now, Mr. Hope, you have in mind that this particular answer has to do with the time when you and Mr. James, according to your testimony, were at Ocean Park at the snake pit?

A. I do, yes, sir.

Q. Now, is it correct that at that time you said: "I was asking him questions—I didn't hear a whole lot of it, but I did hear from the man that owned the pit, 'I will bet you \$20.00 there isn't a poisonous snake in the city.'"

A. No, sir.

Q. What did happen at that time?

A. I was standing somewhere near Mr. James, and he was asking the man that owned the snake pit in Ocean Park questions. He told me to move around, but before he did, I heard Mr. James say to the man in the pit that Mr. James would bet him \$20.00 that the owner didn't [fol. 311] have a poisonous snake in the pit.

Mr. Williams: That is all.

Cross-examination (Continued).

By Mr. Parsons:

Q. Now, at that time you say that Mr. James told you to move around, Mr. Hope?

A. Yes, sir.

Q. Where did he tell you to go to?

A. On the other side of the pit.

Q. And what else, if anything did he say at that time, with reference to your movement?

A. Nothing at that time—oh, yes, he did too. He said he didn't want people to think that we were together; he didn't want this man to think we were together.

Q. Now, during the time that you were at this pit were you together any considerable period of time?

A. No, sir, not any considerable period of time.

Q. What was the longest period of time that you and Mr. James stood by one another?

A. Not over three or four minutes.

Q. Not over three or four minutes?

A. I would say that was it.

Q. Did you walk in together?

A. No, sir.

Q. Walked in separately, is that right?

[fol. 312] A. Yes, sir.

Q. And did you both go to the same side of the pit?

A. The pit, as I remember it, is circular.

Q. And there is a walkway completely around it, is there not?

A. Yes, there is.

Q. So that persons may walk around and look down in the enclosure where the snakes and the operator in charge are, is that right?

A. That is right.

Q. And you and Mr. James didn't go around the same way, did you?

A. No, sir.

Q. You went in opposite directions, is that right?

A. Yes, sir.

Q. And at any time, for more than a moment or so, did you have any conversation with one another?

A. Not to my recollection at the present time, no, sir.

Q. So that during the time that afternoon that you were there, at the most you were not together more than three or four minutes?

A. As I recollect it, yes, sir.

Q. And during the time that you were there were there other persons in there watching the exhibit?

A. I believe there were, yes, sir.

Q. And were there many or few persons?

[fol. 313] A. I think there were few.

Q. But during all of the time that you were in there there were persons coming in and out, were there not, to observe the exhibit?

A. I wouldn't say that they were going in and out that fast, no, sir. I don't think there were more than four or five people in there all the time that I was in there.

Q. Did they remain there throughout the time that you were there?

A. I don't know.

Q. Do you recall that at any time that you and Mr. James were the only persons in the pit, other than the operator?

A. I don't recall that.

A. And was Mr. Allman in the pit at all times?

A. I believe he was, yes, sir.

Q. Was he alone in the pit with the snakes?

A. I think he was.

Q. Did he leave the pit at any time while you were there?

A. Not that day, I don't believe.

Q. On this particular date when you tell us that Mr. James was with you, that is the day to which my questions are directed.

A. Yes, sir.

Q. How long were you there?

A. I believe we were there a matter of an hour or more.

Q. And were persons asking the operator questions?

[fol. 314] A. I imagine they were, yes. Everybody seems to ask questions that goes in there.

Q. Well, it is your best recollection now, is it not, that the people were asking the operator questions about the snakes and their habits and conduct, is that right?

A. As I remember it, any one that asks him a question he will direct his attention to that person until they have finished with whatever the subject might be, and then he moves on to the next person and gives them the same demonstration.

Q. And as you have now related it, that was taking place during that afternoon, is that right?

A. Yes, sir.

Q. And during the course of these conversations the attention of the snake pit operator would be directed to various snakes, would it not, by the various persons inquiring there?

A. Yes, sir.

Q. And he would bend down, and with his hands, or with a stick, pick up the snakes, and display their various movements?

A. I didn't see him pick up any snakes.

Q. Did you see him observe the snakes?

A. Yes, sir.

Q. For a considerable period of time while he was explaining the conduct of the snakes to various people there, [fol. 315] the operator was observing the snakes, was he not?

A. Yes, he was.

Q. And every moment or two he put his eyes on them, did he not?

A. Yes, sir.

Q. And observed their movements?

A. Yes, sir.

Q. And were the snakes in close proximity to the operator?

A. I don't recall.

Q. How far away was he from the snakes?

A. I don't know. The pit was full of snakes. Sometimes he would be standing right in front of one.

Q. And he was in and about the snakes, was he not?

A. That is right.

Q. And practically at all times keeping his attention on the snakes? For a moment or so he would direct his attention to a visitor, and then back on the snakes again, is that about the way it occurred?

A. I would say he devoted more time to the customers than he did to the snakes.

Q. Would he illustrate by pointing to the snakes, in illustrating his discussions with the persons?

A. He did, and he would have the snake strike at him.

Q. Yes, he would show how the snake strikes, and would point out the various colors, and indicate whether it was a [fol. 316] Western black diamond back, or Western Pacific, or Red Rattler, or things of that sort, would he not?

A. Well, I didn't hear much of it, myself.

Q. But in substance that was along the line that this operator was illustrating his exhibit there, was it not, telling the persons the type of snakes that were there, and pointing out their individual characteristics?

A. I would imagine so, yes, sir.

Q. Now, you say you imagine so. Is that your recollection of what you did hear there, anyway, in substance?

A. I said I didn't hear much of this conversation.

Q. Well, were you observing the exhibit?

A. I was on the far side. I wasn't where the gentleman was giving his demonstration.

Q. Mr. Hope, we have had some little difficulty here getting this record right, and if you will keep your voice up then I think we will get it as it is related.

A. Yes, sir.

Q. Now, this pit is how big? This snake pit is how big?

A. It is quite large. I don't have any idea how large it is.

Q. Well, can you give us some idea of the diameter by pointing out something here in court?

A. Well, it is as large, if not larger, than the enclosure in here.

Q. Is it safe to say that the width of the pit is about [fol. 317] the distance from yourself to myself?

A. Easily that, yes, sir, if not wider.

Q. And how deep was it?

A. About six or seven feet.

[fol. 318] By Mr. Parsons:

Q. So that the person, the operator, was some three or four feet below the person who stood around the circle of the pit, was he not?

A. Yes, sir.

Q. And above the top of the pit and to the top of the rail—there is a railing along the top of the pit?

A. I believe there is.

Q. Upon which passers by may rest their elbows and lean over and look in the pit, is that right?

A. Yes, sir.

Q. And between the top wiring of the pit and this wiring there is a covering, is there not?

A. I don't recall whether there is or not.

Q. Now, did you and Mr. James leave together?

A. No, sir.

Q. You left separately?

A. Yes, sir.

Q. Now, directing your attention to another subject, you stated that you saw Mr. James on August 3rd, is that right?

A. Yes, sir.

Q. What day of the week was that?

A. On Saturday.

Q. And you saw Mr. James about 5:30 of that day, is that correct?

A. I saw him before that, sir.

Q. What time did you see him before that?

[fol. 319] A. I saw him about 1 o'clock.

Q. And then you later saw him that afternoon about 5:30?

A. I wouldn't be positive, somewhere between 5:30 and 6:00 o'clock.

Q. Well, at that time you met him in front of the shop, is that correct?

A. Yes, sir, by prearrangement by telephone.

Q. And did he come out and get in the car with you?

A. Not the first time. I had to drive around the block a time or two.

Q. Did you drive around the block more than a couple of times?

A. I don't think so, no.

Q. And on the second time you passed the shop, he climbed in the car with you, is that right?

A. Yes, sir.

Q. And then you and he went in which direction?

A. West.

Q. And where did you leave the car finally, if at all?

A. I left the car at Wilshire and Vermont and went in the drug store.

Q. At Wilshire and Vermont?

A. Vermont and Wilshire. We were on Vermont.

Q. And you were in the drug store a moment or two, were you?

[fol. 320] A. About ten minutes, I would say.

Q. And from there, where did you go?

A. I went north on Vermont Avenue to approximately Beverly,—or right at Beverly.

Q. And is that where you left Mr. James?

A. Yes, sir, that is where I left Mr. James.

Q. And at or about the time that you left the car, you had a conversation with Mr. James, is that right?

A. That is right.

Q. And that is the time when he told you that it was he who was the killer, is that right?

A. That is right.

Q. And that his wife had some insurance and that he intended to kill her for it, is that right?

A. That is right.

Q. So that it was about 6 o'clock when you left Mr. James, is that right?

A. It was later than 6 o'clock.

Q. How much later?

A. Well, I wouldn't be able to say, 35 or 40 minutes or maybe more.

Q. Possibly then half past six, is that right?

A. I would say between half past six and seven o'clock.

Q. And how did you fix the time as between 5:30 and 6:00 that you picked up Mr. James at the barber shop?

A. Why, my wife and I went to dinner after I returned [fol. 321] home. It was a short distance and my car was across the street and I went over and got it.

Q. And it was about 6:30 when you and she went to dinner?

A. No sir, it was about 8 o'clock.

Q. It was about 8 o'clock?

A. Yes, sir.

Q. And did you spend some time with your wife in between the time you left Mr. James—

A. Yes sir, we went to a show.

The Court: Let me interrupt for a minute.

(Calendar matters.)

The Court: You may proceed in the case on trial.

By Mr. Parsons:

Q. Now, after you left Mr. James that evening, at Beverly and Vermont, when did you next see Mr. James?

A. Between 12:30 and—between 12:00 and 12:30 on the following day.

Q. And that was at the James' home in La Canada?

A. Correct, yes sir.

Q. And you went out there, did you?

A. Yes, sir.

Q. And then you spent some time there at the James' home, did you not?

A. I was there about an hour, between an hour and a half and an hour and fifteen minutes.

[fol. 322] Q. And about 10 minutes after—You remained in the garage some 10 minutes or so after you arrived and talked with Mr. James, is that right?

A. No, Mr. James came out to meet me.

Q. And you spent about some 10 minutes there in the garage, is that true?

A. That is right.

Q. And during that time you had some conversation did you?

A. Yes, sir.

Q. With reference to what was to be done, is that right?

A. The removal of the snakes.

Q. And at that time, did you observe a box there?

A. I observed three boxes.

Q. And were there snakes in the box or boxes?

A. Yes, sir.

Q. And at that time did you pick up a box and take it in the house?

A. Not at that time, no sir.

Q. When did you pick it up, pick up a box and take it in the house?

A. About 20 minutes later.

Q. So that along 1:30 was when you picked up the box and took it in the house, was it?

A. No, sir.

Q. What time was it?

[fol. 323] A. Between quarter of 1:00 and 1:00 o'clock.

Q. Between quarter of 1:00 and 1:00 o'clock?

A. Yes, sir.

Q. And this box, which you picked up and took in the house, did it have a snake in it?

A. Yes, sir.

Q. Did it have more than one?

A. No.

Q. Describe now that box. What was its size?

A. It was a wooden, glass top box.

Q. About how long?

A. Well, I do not know—it was about this long.

Mr. Williams: Indicating about two feet.

By Mr. Parsons:

Q. About two feet, would you say?

A. Yes, about two feet.

Q. And about how wide was the box?

A. The box was 7 or 8 inches wide, I should say.

Q. Now, here is a ruler, Mr. Hope, and I am holding the 12 mark there, indicating a foot. It may be a little bit easier to measure it that way.

A. Yes, sir.

Q. Now, I will mark that—you watch me in front of you—two feet?

A. Yes, sir.

Q. Now, is that about the correct length of the box?

A. Yes, sir.

[fol. 324] Q. Will you indicate about how wide the box was?

A. The box was about as wide as this banister.

Q. Which happens to be $8\frac{3}{4}$ inches, is that right?

A. Yes, sir.

Q. Now, you look at the ruler, and check me.

A. Yes, sir.

Q. That is correct?

A. Yes, sir.

Q. And how high was the box?

A. I would say that the box was 10 inches high, between 10 and 11 inches high.

Q. Now, is that about the height of the box?

A. As I remember, yes.

Q. And on one side of the box it was glass, is that right?

A. That is right, yes, sir.

Q. And did you—strike that. As you went in the house Mr. James followed along behind you, did he?

A. He held the screen door to the back porch.

Q. And you carried the box in?

A. I did.

Q. With the reptile in?

A. I did.

Q. And when you went in the house, where did you go? What portion of the house?

A. When I entered the house, I found it in the kitchen. [fol. 325] He preceded me in there. I stopped on the porch, and he preceded me into the kitchen. He then went directly to the breakfast room.

Q. Mr. Hope, I will hand you the pointer, and I will stand out of view. Now, if you will indicate the course that was taken by you as you brought the box into the house, please. Maybe I can help you. The north is the top, the east is on the left-hand side, and the south is the bottom, and the west is on the right-hand portion of the plat. Now, this indicated on the east side is the driveway. That is the area in gray. The dining room is here, the living room indicated here, the sun room indicated here, and the bedroom indicated here, and this is the bedroom and a bathroom, and here is the kitchen and the sink and the stove. Now, immediately to the west of the house is indicated the fish pond. Now, to the north of the house there is indicated a table. There are walks indicated there in gray. Does that help you?

A. Yes.

Q. Now, indicate where you entered the house, please?

A. This indicates the door?

Q. Yes.

A. I came through here. He held this door open. That is the door to the back porch. I stopped here by the ice box.

Mr. Parsons: Now, I will take the liberty, if I may, your [fol. 326] Honor, in marking this "H-1", indicating the door entered by Mr. Hope.

Q. Now, what course did you pursue from this "H-1"?

A. I came directly right to there.

The Court: Now, just a minute. As I understand, prior to that you stopped for a moment by the ice box?

A. Yes, and Mr. James preceded me in.

The Court: That was indicated there. It was a point that was southwest, directly southwest.

[fol. 327] Mr. Parsons: If you will indicate where you stopped. You stopped at that point there?

A. Yes.

Q. I will mark it with an "X", "H-2". Now, did you hesitate there for a moment?

A. Yes, sir, I did.

Q. And from there where did you go?

A. From here I came directly down here, (indicating).

Q. Indicating that you walked directly from the point "H-2" through a door, through the kitchen, and to what is marked as a seat, is that right?

A. Yes, sir.

Q. Marked on the map as a seat?

A. Yes.

Mr. Parsons: And marked "H-33".

The Court: Well, "3" would be all right.

By Mr. Parsons:

Q. That is the point where you stopped?

A. I stopped where the table was out.

Q. This table had been pulled out, is that correct?

A. Yes.

Q. And where was the table—can you illustrate the position of the table?

A. As I recall it, the table was here, (indicating on diagram).

Mr. Parsons: Now, if I may, your Honor, may I have that drawn in blue pencil, the position of the table where he [fol. 328] saw it?

The Court: If you will, Mr. Parsons. Make it the same size as the table.

Mr. Parsons: I will give you a ruler, and that will aid you, perhaps.

A. This is the door here?

Q. That is the door there.

The Court: Draw it lightly first.

A. It could have been over this way.

By Mr. Parsons:

Q. Indicating to the west a little?

A. Yes, sir.

Q. It could have been?

A. Yes, sir.

Q. Are you satisfied now that where you have drawn the position of the table is approximately correct?

A. Approximately; there isn't much room in there at all.

[fol. 329] Mr. Parsons: If I may make that a little heavier, so it can be seen.

The Court: If you will, please.

The Witness: In fact, I am sure it was over a little farther to the west.

Mr. Barnes: I didn't hear that remark?

The Court: The witness said "In fact, I am sure it was over a little farther to the west."

Mr. Parsons:

Q. About how much farther would you say?

A. Well, practically against this cupboard. I am sorry I didn't draw it larger.

Mr. Parsons: Shall I mark this—

The Court: Before you mark it, in view of the fact that the witness has made a correction, I think we should get it definite. I note that the oblong that he has drawn is not the same size as the oblong on the plat. Perhaps by enlarging it he can get it closer to the width he has indicated.

Mr. Parsons: Will you try to enlarge the table so that it will be a little more nearly in the correct position? It is

possible, your Honor, I should take this razor blade and scrape a little of it off.

Mr. Barnes: I think we have a red pencil, if you desire.

Mr. Williams: Would you like to fill in the second one with a red pencil?

Mr. Parsons: Yes, I will. Now, just take your seat, [fol. 330] please. If I may mark the first oblong, your Honor, "H-4".

The Court: You have a red pencil there?

Mr. Parsons: I have a red pencil.

The Court: Suppose you fill the big one in with red, and then the one which is not filled in will be indicated as the one that was first drawn.

Mr. Parsons: So that the first figure which you drew in you have now substituted for that the figure filled in with red, is that true?

A. I think that is more nearly correct, yes, sir.

Q. That more truly reflects the position of the table when you observed it?

A. Yes.

Q. And did you observe anything upon the table?

A. I did.

Q. And what did you observe there upon the table?

A. I saw Mrs. James there tied to the table.

Q. And what position did you take to set the box down, if you will indicate that, please?

A. Her head was up here, and she was tied across the shoulders.

Q. Tied across the shoulders. Where did you put the box?

The Court: Just a minute, so we get the record. Indicating the end of the table which is toward the southwest?

Mr. Parsons: That is true.

A. Her feet were down here.

[fol. 331] The Court: Indicating the opposite end of the table.

A. Mr. James had preceded me, and picked the lady's foot up, and pointed to this seat here in this breakfast nook. As the box was set down there, he stuck this foot in the box.

By Mr. Parsons:

Q. Now, as you set the box down on the seat, did you open the box?

A. That wasn't necessary.

Q. Was the box open or closed?

A. The box was open.

Q. The box was open as you set it down?

A. In fact, he jumped, afraid he was going to get bit himself.

Q. And did the snake come out of the box?

A. No, sir.

Q. And as you set the box down, and the box was opened, and Mr. James jumped, what occurred immediately after that?

A. The snake struck her in the region of the lower part of the foot.

Q. Did you observe that?

A. I saw that, yes, sir.

Q. And where was the box on the edge of the seat?

A. The box was right here, toward the outside.

Q. How far from the west edge of this seat was the box?

A. One end of it was right on the edge of it; the rest of it was back toward the wall.

[fol. 332] Q. And which direction was the glass in the top slid?

A. The glass slid to the east.

Q. And how much of the foot was placed in the box?

A. I don't know.

Q. And then the foot was immediately pulled out, was it?

A. It was, yes, sir.

Q. Was it done something like this, placed in the box like that, and pulled out?

A. Yes, sir.

Q. Just about as I have described?

A. No, sir, faster than that.

Q. Just like that?

A. Just like that, yes, sir.

Q. And then you took the box and immediately left, is that right?

A. Yes, sir.

Q. Took it out to the garage?

A. Took it out to the garage.

Q. Indicate where you were standing at the time the occurrences you have just related took place?

A. Right there.

Q. Now, indicate that again, please, sir?

A. As near as I can tell, the table in there, I was right here.

Q. Have you got it correct now?

A. As near as my memory serves me.

[fol. 333] Q. You hold it, and I will mark it, if I may, your Honor. I have drawn a circle, and if I may, your Honor, mark that "H-4"?

The Court: Suppose you put your notation in the blue pencil, Mr. Parsons, the circle being in red.

Mr. Parsons: In red, yes. I will mark that "H-4".

Q. Now, the circle indicated upon the plat here in red, and marked "H-4", was the position as near, now, as your best judgment will permit you to state it, the position at which you stood when the occurrences concerning which you have just testified took place, is that right?

A. Yes, sir.

Q. Now, you state that you saw this snake touch the toe of Mrs. James, is that right?

A. I didn't say "toe", sir. I said the lower part of the foot. I would not be sure where it was.

Q. How far did the snake's head travel before it struck the foot?

A. I would say about four inches, three or four inches.

Q. About three or four inches?

A. Yes.

Q. Not any more than that?

A. No, sir, not any more than that.

Q. And in what part of the box was the snake?

A. The box was sitting this way. The snake was coiled in this part of the box right here.

[fol. 334] Q. Indicating the east end of the box?

A. Yes, sir.

Q. And you were familiar with the size of that snake, were you?

A. Yes, sir.

Q. Had you ever seen it before?

A. Yes, sir.

Q. And how long was that snake?

A. Well, I don't know. I would say about three feet long.

Q. Could you give us any description of that snake?

A. No, sir.

Q. Do you know what color that snake was?

A. It was spotted; I don't know what color it was.

Q. Well, the spots, can you describe those?

A. It was black and yellow, if I remember correctly. It was a rattlesnake. It had rattles on it.

Q. Black and yellow. Did you observe how many rattles the snake had upon it?

A. No, sir, I didn't.

Q. Do you recall whether or not you had ever seen that snake prior to that day?

A. Yes, sir.

Q. Where did you first see that snake?

A. At Snake Joe's.

Q. When was the first time you had ever seen that snake?
[fol. 335] A. At Snake Joe's.

Q. When?

A. Saturday afternoon, on August 3rd.

Q. Saturday, August 3rd?

A. Yes, sir, in the afternoon.

Q. That is the first time you had seen that snake?

A. Yes, sir.

Q. And you purchased it, and brought it up in a box, is that right?

A. I did.

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[fol. 336] Cross-examination (continued).

By Mr. Parsons:

Q. Now, Mr. Hope, you state that this was a rattlesnake that you observed in the box, which you took in the house. Did you at any time hear audibly the sound of any rattles?

A. No, sir, I did not.

Q. At any time while you were in the house you didn't hear that, did you?

A. No, sir.

Q. Now, as you stood in the position "H", you say this lady was strapped on the table marked here in red, is that right?

A. With a rope, yes.

Q. And her legs protruded over the north east end of the table, is that right?

A. Yes, sir.

Q. How much of her body was on this table?

A. As near as I can recall, sir, her legs from her knees [fol. 337] down.

Q. As much as your legs now protruding over the edge of the chair?

A. I would say so, yes.

Q. And as you came by, Mr. James had to move one of the legs so that you could get through, is that right?

A. Yes, sir.

Q. Well, which way did he move the leg so that you could get through? Which way did he move it?

A. Do you want me to show you?

Q. Yes, if you will indicate.

A. The leg was down over the end of the table as I recall it.

Q. They were down over this end of the table, were they not?

A. Yes. He moved it that way.

Q. How is that? You indicated to the northwest.

A. Just a small passageway; as I walked in I had to turn sideways.

Q. Well, that is not the question, pardon me, please, sir.

A. Yes, sir.

Q. If you will just tell me which way he moved her leg?

A. Raised it up and bent it back slightly this way, that would be to the north.

Q. Raised it up off the table, did he?

A. Yes, sir.

[fol. 338] Q. And to one side?

A. A small amount.

Q. That was the leg on the lefthand side?

A. Yes.

Q. Did he leave the right one hang down?

A. Bending over the table, yes sir.

Q. Then after this occurrence, you immediately went outside, is that right?

A. I did, yes sir.

Q. About how long were you in the house at this position near the table?

A. I was there less than five minutes.

Q. And when you went in the house, did you observe particularly this body or rather the form of Mrs. James resting there upon the table? Did you take a look at her?

A. I couldn't help it.

Q. How was she dressed?

A. She was dressed in a nightgown.

Q. What kind of a nightgown, do you know the color?

A. No, I don't.

Q. Can you tell us anything about the nightgown, except it was a nightgown?

A. I don't believe I could, no sir.

Q. Can you tell us whether it was silk or crepe or cotton or flannel, or can you give us any idea of the fabric?

A. I can say it was not flannel.

[fol. 339] Q. It was not flannel?

A. It was not flannel, no sir.

Q. Was anything about it of any distinguishable nature that you could tell us about?

A. No, sir.

Q. Any peculiar characteristics about it?

A. No, sir.

Q. That are in your mind?

A. No, sir.

Q. Then as you stood there you observed that he had tape across her mouth and eyes?

A. Yes sir, I observed that as I walked through the door.

Q. Now, this must have been about 1 o'clock, is that right, a quarter of 1:00 to 1:00 o'clock, is that true?

A. Yes sir, that is true.

Q. This occurrence concerning which you have just testified, and then you went outside, is that correct?

A. I went to the garage.

Q. And when again did you return into the house at all?

A. Between 6:30 and 7:00 o'clock on Monday morning.

Q. Between 6:30 and 7:00 o'clock Monday morning?

A. Yes, sir.

Q. That is the first time from 1 o'clock Sunday that you had been in the house, is that correct?

A. That is correct.

Q. And when you returned in the house Monday morning, what portion of the house did you go to?

[fol. 340] A. Do you wish me to designate on here?

Q. Yes, that is why I am coming over. Just take the rule and indicate where you went Monday morning at 6:30.

A. He came to the garage after me, and the garage is right in here, and came through here and stopped right here.

Q. Where was the body?

A. Right here. (Indicating on diagram).

Q. Now, will you indicate again where the body was lying, you say?

A. Is this the doorway here?

Q. Yes.

A. The head was practically here, about here and the knees about here.

Q. Well, would it be lying along in this position?

A. Correct, sir.

Q. Will you draw the position of the body? Locate it carefully so you won't have to do it the second time.

A. This is the doorway from the hall to the kitchen.

Q. Now, you have the advantage of me, Mr. Hope, you have been in the house and I have not. You just look at it.

Mr. Barnes: May I make an observation? It might be a good thing to call attention to the scale of the map.

The Court: One inch to two feet.

Mr. Parsons: Now, if there is anything I can do to help you with the description, I would be glad to help you with it.

[fol. 341] A. Well, I don't know, but I do indicate here her head and shoulders, while I looked through the door, standing in the kitchen.

The Court: May I suggest that the head was the position of the last "L" there.

A. Yes, sir.

The Court: If you drew a circle there—the feet were toward the bathroom?

A. Yes, sir.

Mr. Parsons: All right. I will make that heavier.

The Court: And let the record show that it is made in red.

Mr. Parsons: I will make it "H-5". Now, "H-5" indicates a position of the body when you saw it about 6:30 in the morning of August 6th, is that right?

A. August 5th.

Q. Was it August 5th.

A. I don't know; it was Monday morning.

Q. It was Monday morning?

A. Yes, sir.

Q. And this part, done heavily in red, indicates the upper portion of the head, that you saw there?

A. Yes, sir.

Q. Now, did you observe whether or not there was any tape upon the face?

A. No.

[fol. 342] Q. Do I understand that you didn't observe that there was any?

A. There wasn't any.

Q. There wasn't any tape?

A. No, sir.

Q. And you had been at the premises of Mr. and Mrs. James from about 1:00 o'clock in the morning, is that right?

A. From 1:00 or 1:30.

Q. And during that time, from time to time, you saw and talked with Mr. James, is that right?

A. Twice.

[fol. 343] Q. Twice. When was the first occasion?

A. When I first arrived there, or shortly after I arrived there.

Q. And you arrived there at 1:00 in the morning?

A. Between 1:00 and 1:30; around there.

Q. That was now on the morning of Monday?

A. That is right.

Q. And how long after you arrived did you first see Mr. James?

A. Almost immediately.

Q. Did he come out and greet you?

A. He came out from the garage, yes, sir.

Q. I understand from your testimony that when you observed him then he had been drinking heavily?

A. As to how much he had, I don't know. He had been drinking. He had a bottle with him.

Q. Well, did he have the appearance of having been drinking?

A. He seemed quite vexed at me.

Mr. Parsons: I move to strike that out. Did he have—

The Court: The answer may remain. It is partially responsive.

By Mr. Parsons:

Q. Had he been drinking?

A. Yes, sir, I could smell it. I didn't see him drink, that is, up until that time.

The Court: Did his actions indicate that he had been [fol. 344] drinking?

A. Yes, sir, they did.

By Mr. Parsons:

Q. And he had a bottle with him, is that right?

A. Yes, sir.

Q. And sat it down in the seat between you, and the two of you then indulged, is that right?

A. Had a couple of drinks, yes.

Q. Had a couple of drinks of whiskey, is that right?

A. That is right.

Q. Were they pretty good sized drinks of whiskey?

A. I wouldn't say so.

Q. Did Mr. James some time after that drink any more?

A. Not in my presence.

Q. Did he at any further time in the morning have something to drink?

A. Not in my presence.

Q. Later on in the morning he gave you a glass of whiskey, did he not?

A. He did.

Q. Did he drink, himself?

A. Not in my presence. He brought it out to the garage.

Q. Did he bring it in a glass or a bottle?

A. He brought a glass. There was already a bottle in the car.

Q. And he brought a glass of whiskey out of the house, is that right?

[fol. 345] A. Yes, sir.

Q. Now, at the time that you returned in the house at about 6:30 in the morning, I understand that you then helped Mr. James take this body outside, is that right?

A. I did.

Q. And by which means did you leave the house? By which exit?

A. The back door.

Q. Just indicate with the pointer, please, what door you went out?

A. Came through this door, this door, and this door.

Q. You walked then from the hallway through the kitchen, through the porch, and out the door "H-1", is that right?

A. That is right, sir.

Q. And down this walk, did you, proceeding down toward the fish pond?

A. That is right.

Q. And how far did you go? Indicate with the pointer?

A. Right here.

Q. Indicate, please, and I will mark it.

A. About there.

Q. I will mark that "H-6" in blue. That is the point at which you stopped with Mr. James while you were both holding the body of Mrs. James, is that right?

A. That is right, sir.

[fol. 346] Q. Is that as far as you went?

A. That is as far as I went.

Q. Where did you last see the form of Mrs. James?

A. On the sidewalk, right there where you have "H-6".

Q. That is the last point at which you saw her?

A. Yes, sir.

Q. And how long after you saw the form of Mrs. James at the point "H-6" was it that you left the premises?

A. I would say within about five or ten minutes.

Q. And you and Mr. James left together, did you?

A. Yes, sir.

Q. Now, you had been in this house how many times prior to August 3rd, before August 3rd?

A. Well, I don't know exactly, but not over—I was never in the house but once except the time that I lived there.

Q. Well, you were there for some four or five days, living there, is that right?

A. Yes, sir.

Q. And upon one occasion had you taken a box containing a snake, or snakes, out there?

A. Yes, sir.

Q. And when was that, Mr. Hope?

A. That was the last part of June—or, I mean the snakes that I got the last part of June. It was about the 5th or 6th of July.

[fol. 347] Q. About the 5th or 6th of July?

A. Yes, sir.

Q. That is when you had taken some snakes out there in a box?

A. Yes, sir.

Q. And where did you deliver them there?

A. Mr. James was in the garage, and I left them in the garage.

Q. And did you see anybody there at that time?

A. I did.

Q. Whom did you see, other than Mr. James?

A. Mrs. James.

Q. You saw Mrs. James?

A. I didn't see her. There was some one in the house.

Q. There was somebody in the house?

A. Yes, sir.

Q. Did you go in the house at all?

A. No, sir.

Q. Did you hear voices in the house?

A. No, sir.

Q. Do you know whether or not Mrs. Murphy was there?

A. No, sir, I don't.

Q. Now, did you ever see Mrs. Murphy at the house?

A. Yes, sir.

Mr. Parsons: Stand up, Mrs. Murphy.

(Lady stands).

[fol. 348] Q. Is this the lady whom you saw?

A. That is the lady, yes, sir.

Q. Mr. James' sister? Sit down. Thank you, Mrs. Murphy. When was it that you saw her at the house?

A. I saw her there on a Sunday, a Monday, and I think on a Tuesday.

Q. Sunday, Monday and Tuesday, is that right?

A. That is right.

Q. And in what month?

A. July.

Q. Can you now fix the date for us, approximately?

A. Only by this way: the Saturday preceding—the Sunday preceding Mrs. James' visit to Long Beach, and I think it was one or two days afterward.

Q. Now, you saw Mrs. James leave ostensibly for Long Beach, is that right?

A. That is right.

Q. She was going down to a dental convention, is that right?

A. I don't know where she was going, what convention.

Q. And you saw Mrs. Murphy there at the time Mrs. James left to go to Long Beach, is that right?

A. I don't know whether she was there that day, or not.

Q. Was she there the day before?

A. She was there on the Sunday.

Q. The Sunday before Mrs. James left, is that right?

[fol. 349] A. Yes.

Q. Was Mrs. James there at that time?

A. Mrs. James was there.

Q. And was Lois Wright there?

A. She was there.

Q. Then you saw Mrs. Murphy at the house on one occasion at least after Mrs. James had gone to Long Beach, is that correct?

A. That is correct, yes, sir.

Q. Would you say more than one occasion?

A. Not over two.

Q. Possibly one, or possibly two, is that right?

A. That is right.

Q. And when you were there were you staying over night at that time, upon the occasions when she was there?

A. Yes, sir.

Q. And, of course, you visited with her, and talked with Mrs. Murphy, as well as the rest of the folks in the house?

A. They were in bed by the time I would get there at night.

Q. Did you have occasion to see or talk to either Mrs. Murphy or Mrs. James while you were there?

Q. On one occasion, yes, they were waiting.

Q. Now, during the times that you were out there, upon one or two occasions you saw Mrs. James there alone, did you not?

[fol. 350] A. I never did, no, sir.

Q. Were you ever there at any time while Mrs. James was alone in the house with you?

A. Never.

Q. And there was always either Mr. James or Mrs. Murphy there, is that right?

A. That is correct, or no one. I was there one day by myself.

Q. You were there one day by yourself?

A. That is right.

Q. And when was that that you were there alone?

A. That was during the time that Mrs. James was in Long

Beach. The landlord was over there moving hardwood to make flooring in another house.

Q. Now, can we fix this a little nearer toward the early part of her visit in Long Beach, or the latter part?

A. I don't know how long she was down there.

Q. Did you see her after she returned?

A. No, sir—well, yes, sir.

Q. How?

A. Yes, sir.

Q. When did you first see her after she returned?

A. The 4th of August.

Q. The 4th of August?

A. Yes, sir.

Q. Now, on Sunday, in August, on the Sunday which you [fol. 351] say these events occurred, Mr. James was drinking off and on during the afternoon, was he not?

A. I don't know; I wasn't there.

Q. Then you saw him, did you not, about 1.00 o'clock on Sunday?

A. You say about 1.00 o'clock on Sunday?

Q. Yes.

A. Yes, I saw him.

Q. Had he had anything to drink then?

A. He had, yes, sir.

Q. He had considerable?

A. He had, yes.

Q. And when you left, had he been continuously drinking off and on, until you left?

A. Only one or two times in my presence.

Q. Now, when you arrived there on Monday morning about 1:00 o'clock, and you say you left about 7:00 o'clock, or thereabouts—

A. Yes, sir.

Q. Where did you stay that six hours? Where were you?

A. I was in the car in the garage.

Q. You stayed in the car in the garage?

A. Yes, sir.

Q. And how far is that garage situated from the house?

A. Oh, I don't know.

Q. Well, you don't have to point it out. Just give us [fol. 352] the distance in feet.

A. About 20 feet, I would say, or about 25 feet—no, it was farther than that.

Q. How is that?

A. It was farther than that.

The Court: As far as from here to the back wall?

A. No, sir, from about here—about half way to the wall.

By Mr. Parsons:

Q. Well, as far as your position to the railing?

A. It was farther than that.

Q. As far as the first row?

A. I would say the second row.

Q. To the second row?

A. Yes.

Q. And what is your best judgment in feet?

Mr. Williams: I will say, your Honor, that we have a diagram drawn to scale, which shows it.

[fol. 353] Mr. Parsons: Well, I have a way to test his recollection—

The Court: There is no objection as to whether you are trying to fix a distance—

A. 30 or 35 feet.

By Mr. Parsons:

Q. 30 or 35 feet?

A. Yes.

Q. Now, did you get out of the automobile at any time when you arrived, 1 o'clock Monday morning, until you went in the house at 6:30 to aid in the removal of Mrs. James' body?

A. I did go out. I got out and closed the garage doors.

Q. Did you close them?

A. I did.

Q. About what time was that?

A. About 1:30.

Q. And did anybody come in the garage after that?

A. Mr. James arrived immediately after.

Q. And did you remain in the garage with the doors closed while you and he were talking?

A. Yes.

Q. And were the doors opened after that, subsequent to that?

A. Well, when he went out, he opened it and closed it.

Q. He opened it and closed it?

A. That is right.

Q. Did he come back in there again?

[fol. 354] A. About 4 o'clock.

Q. About 4 o'clock?

A. Yes.

Q. Now, where were you at 4 o'clock, sitting in the car?

A. Yes, sir, sitting in the car.

Q. Were you asleep?

A. I had dozed off, yes.

Q. And did you have any conversation with Mr. James at 4 o'clock?

A. Yes, he says, "That is that."

Q. And that is the time that he brought out a pint of whiskey to you?

A. No sir, he brought that out when he came out the first time.

Q. He brought out a pint the first time?

A. I think it was a pint; it was a bottle.

Q. And from time to time during the night you drank it?

A. There was over half of it left in the morning.

Q. It was drank between the two of you?

A. Yes, sir.

Q. About in equal portions?

A. I would say in about equal portions.

Q. And about 6:30, did he return to the garage then?

A. He did.

Q. Were you asleep then?

A. No, I was very much awake.

[fol. 355] Q. You were very much awake then?

A. Yes, sir.

Q. But you had not gone in the house?

A. No.

Q. Did he ask you then to come in the house?

A. He did.

Q. And you went in there with him, is that right?

A. I backed the car out and went in the house.

Q. And then, on that occasion, you did, as you have related, you carried the body out and placed it where you have indicated?

A. Before backing the car out?

Q. Yes.

A. No, sir.

Q. Before backing the car out, did you understand?

A. Yes, sir. I backed the car out and turned around and it was left by the back porch.

Q. Left by the back porch?

A. Yes, sir.

Q. And during this time, June, July, the early part of June, 1935, you were short of money?

A. No, sir.

Q. You had plenty of money?

A. I never had plenty.

Q. Did you have what money you needed?

A. I seemed to be getting along all right, yes.

[fol. 356] Q. How much money did you make in June?

A. I worked all the month of June.

Q. Do you know how much you earned in June?

A. Oh, I would say \$110.00 or \$115.00.

Q. Who did you work for?

A. For the Corporation Building, and also did a little extra waxing of floors.

Q. You worked for the concern that produced the building there?

A. Yes, sir.

Q. And in July—

A. I didn't work for anybody in July.

Q. You didn't work for anybody in July?

A. Yes, sir.

Q. Did you work in the early part of August?

A. Yes.

Q. Who for?

A. The Thrifty Drug Company.

Q. When did you go to work for them?

A. I don't know; it was the first part of August.

Q. The early part of August?

A. Yes, sir.

Q. And approximately when would you say in August?

A. About the 10th, I would say.

Q. About the 10th?

A. Yes, sir.

[fol. 357] Q. Now, after this occurrence that you have related happened early in August, from time to time you saw Mr. James at the barber shop, is that right?

A. That is right.

Q. And on or about the first of September, you borrowed his automobile and went down to Yuma, is that right?

A. I did.

Q. And when, after the first of September, did you next see Mr. James?

A. Well, I saw him about every two weeks or so.

Q. When you would drop in the barber shop?

A. Yes, sir.

Q. As a patron, is that right?

A. Yes, sir.

Q. Did you obtain any money from him during those visits after August 5th?

A. Yes, sir.

Q. How much?

A. I received \$100.00 from him at one time.

Q. And who was it from, Mr. James?

A. Mr. James. He handed it to me underneath the barber cloth.

Q. Now, on Sunday, did you see Mr. James leave the premises at any time that you were there?

A. No, sir.

Q. If he left, you don't know about it?

[fol. 358] A. Right.

Q. Now, when you went back in the house at 6:30 in the morning on Monday morning, did you notice any water on the floor?

A. I didn't notice any, no.

Q. If there was any, you didn't see it?

A. No.

Q. There was nothing that attracted you in any part of the house that you know of, any water on the floor?

A. No, sir.

Q. And her body, such portion as you picked up was dry, was it?

A. Absolutely, yes sir.

Q. And her clothing and the towel that you saw there, the parts that you picked up were dry, is that right?

A. That is right.

Q. And you carried her about the knees, didn't you?

A. Yes, sir.

Q. Her lower extremities?

A. Yes, sir.

Q. And carried her from in the house to the point where you have indicated by the fish pond?

A. Yes, sir.

Q. Now, had you given any study or thought to rattlesnakes prior to this occurrence?

A. No, sir.

[fol. 359] Q. Have you ever made any inquiry into the habits of rattlesnakes, or did you ever know anything about them?

A. I didn't know anything about them.

Q. Had you ever seen one?

A. Not that I know of.

Q. Had you ever had any in your possession?

A. No, sir.

Q. Did you ever have any at your apartment?

A. Yes, sir.

Q. When was that?

A. I took them out of there on the 4th of July.

Q. On the 4th of July, and how long had you had them in your apartment before the 4th?

A. About three or four days.

Q. Is that the only occasion upon which you had had rattlesnakes in your possession, in your home?

A. That is right, yes sir.

Q. At any time in the last year or two?

A. At any time in my life.

Q. Had you ever seen any dried rattlesnake venom?

A. Yes, sir.

Q. You have seen it, sort of golden or yellowish crystals?

A. Yes, sir.

Q. And you have some of those crystals in your possession, have you not?

A. I did have. I gave them to Mr. James.

[fol. 360] Q. And you knew, did you not, that those crystals are as virile as the active venom itself, did you not?

A. I don't know anything about it.

Q. Isn't it a fact that you knew that all you have to do is to scratch the hands and let the blood come and rub the crystals upon the scratch and it is immediately absorbed into the blood stream as effectively as if administered by the fangs of a snake or a hypodermic needle?

A. No, I didn't know that.

Q. You didn't know that; but you did know that they were dangerous, did you not?

A. No, I didn't think it was poisonous.

Q. When was it that you had those crystals in your possession?

A. When I was first sent to get this bunch of snakes I was supposed to have——

.

[fol. 361] By Mr. Parsons:

Q. When is the date?

A. I don't know the date.

Q. Approximately?

A. The last part of June.

Q. Where did you acquire these crystals?

A. From the gentleman I got the first snakes from. I was instructed to tell him it was for experimental purposes.

.

Mr. Parsons:

Q. What was the name of that man?

A. Mr. Kirby.

Q. At Long Beach?

A. Yes, sir.

Q. Is that where you obtained the crystals?

A. Yes, sir.

Q. Where did you see Mr. Kirby in Long Beach?

A. At his place of business.

Q. Where was that?

A. The street I don't know.

Q. Can you tell us approximately in Long Beach where it was?

A. Well, I am not familiar with the streets in Long Beach; I can't tell you, no sir. It was——

[fol. 362] Q. Do you know where the pier is?

.

Mr. Parsons:

Q. If you can tell us, tell us; describe it somehow.

A. Well, as near as I remember you go down the boulevard east from Long Beach, down to the junction of the road.

Q. The boulevard east from Long Beach?

A. You go about a mile and a half, and it is at the junction of a road. It is a road "V". They had, I don't know what you call it, some sort of a circus for children there, a

little merry-go-round and various other amusements for children.

Q. Did you purchase this dried venom from him?

A. No sir, it wasn't purchased from anyone.

Q. How much of a quantity did you obtain?

A. It was in a small jar, a cold cream jar.

Q. Well, are you familiar with ounces?

A. No sir, I am not. A little jar about like that.

Q. A jar about two inches high?

A. Yes, sir.

Q. And an inch and a half or say, two inches in diameter?

A. It was about that big around.

[fol. 363] Q. It would be about an inch and a half in diameter?

A. It was about half full.

Q. About half full. And is that the only time you ever had any dried venom in your possession?

A. Yes, sir. I didn't know then what it was; I didn't know what they called it.

Q. What did you ask for?

A. I asked for rattlesnakes.

Q. And did the man say anything about this material when he gave it to you?

A. Now, if I may answer that, I will explain how I got it.

Q. I am not interested in that, sir. Did the man tell you what this product was, when he gave it to you?

A. He said, "If you are——"

Q. You can answer that "yes" or "no".

The Court: Not necessarily, Mr. Parsons.

By Mr. Parsons:

Q. Did the man tell you what that product was?

A. I believe he did.

Q. Do you know what name he called it?

A. No, sir.

Q. Now, after that, did you ever see any more of a product that looked similar to that?

A. No, sir.

Q. Upon any occasion?

[fol. 364] A. On no occasion.

Q. At any time have you ever performed any experiments with purported rattlesnake venom to see its effects upon animal life?

A. I never performed any experiment of any kind.

Q. With rattlesnake venom?

A. With anything.

Q. With anything. Now, upon one occasion while you were at the James' home, didn't you see Mrs. James alone?

A. No, sir.

Q. Not even for a few minutes?

A. I never have—

Mr. Barnes: Just—

A. (Continuing)—seen Mrs. James alone.

.

By Mr. Parsons:

Q. Now, Mr. Hope, had you ever indicated or said to Mr. James or to any other person that you had any knowledge of medicine or medical science?

A. No, but Mr. James told his sister that.

Q. In your presence?

A. In my presence.

Q. And you didn't deny it, did you?

[fol. 365] A. No sir, I did not.

Q. Now, did you ever have any knowledge of medicine?

A. Never have, no sir.

Q. At any time?

A. No. And neither did I deny the name that he introduced me by when his niece was right there and knew my right name.

Mr. Parsons: I move to strike that out.

The Court: It will be stricken out.

Mr. Parsons: It has been suggested to you by the officers, has it not, that you give as much of a story as you can in response to my questions?

A. That is what I was doing, sir.

Q. Yes, and you were coached right here in the back room by some of the officers in charge of this case as to methods in which you should reply to some of my questions?

A. That is not true.

Q. And didn't you—

The Court: Just a minute, counsel. Are you asking these questions in good faith?

Mr. Parsons: Absolutely.

The Court: You will establish the fact?

Mr. Parsons: If the persons will admit it. They were seen talking here in the hallway.

The Court: The mere fact that people were seen talking does not prove what they were talking about.

Mr. Parsons: We have a right to draw just inferences. [fol. 366] The Court: I know, but when you get to accusing an officer of the court without any better foundation than that you saw him talking, without knowing what he was talking about, I think you are going too far. You may proceed.

By Mr. Parsons:

Q. Now, as a matter of fact, during the preparation of this case you have been taken out of the county jail, have you not, out to the James' home with the officers?

A. Yes, sir.

Q. And you have had meals with the officers outside of the county jail, haven't you?

A. During investigation, yes sir.

Q. The question is, you have had meals with them, haven't you?

A. Yes, sir.

Q. And how many times have you been out of the county jail with some of the officers in connection with the preparation of this case?

A. I have been out of the county jail with the officers in connection with the preparation of this case one time.

Q. To what place did you go?

A. I went to my home and to the United States Post Office to get my bonus.

Q. And you went out to the James' home, did you not?

A. I didn't leave the county jail to go to the James' home, no sir.

[fol. 367] Q. Didn't you go out there and help bring the wire fence in?

A. I was out there at the same time Mr. James was, yes sir.

Q. And you were out there with the officers weren't you?

A. So was he.

Q. But you were there, weren't you?

A. Yes, sir.

Q. And from time to time you have had conversations with the officers who have been preparing this case, have you not?

A. I was being examined myself.

Q. The question is, you have had conversations with the officers.

A. I have had conversations, yes sir.

Q. And which officers have you talked with?

A. I have talked with no less than 7 or 8 officers.

Q. You have talked to Mr. Littleton, have you not?

A. I have.

Q. And you have talked to Mr. Southard?

A. I have.

Q. And do you see those gentlemen here in the court room?

A. I do.

Q. Indicate who they are.

A. The two gentlemen sitting right there.

Q. This is Mr. Littleton, and this is Mr. Southard, is it [fol. 368] not?

Mr. Williams: Stand up, Mr. Southard, and Mr. Littleton.

(Gentlemen stand in courtroom.)

A. That is right, yes sir.

By Mr. Parsons:

Q. And you talked to Mr. Littleton back here in the ante-room, did you not?

[fol. 369] A. I think Mr. Littleton gave me a cigarette.

Q. You had a conversation with him, did you not?

A. In the presence of two bailiffs.

Q. And in the presence of your attorney, did you not?

A. I don't know whether he was there, or not.

Q. Now, you talked with Mr. Fitts, did you not?

A. Yes, I'll say I did.

Q. Yes. And you have talked with others in the District Attorney's office, have you not?

A. Yes, sir.

Q. Officers in charge of this case?

A. Yes, sir.

Q. And you, of course, have discussed it with your attorney, Mr. Cuff?

A. Yes, sir.

Q. And have you discussed your proposed testimony here with anybody?

A. No, sir.

Q. Not a word?

A. I beg your pardon?

Q. Not a word of it?

A. Not a word with anybody.

Q. Now, Mr. Hope, when you were arraigned here in the Superior Court just two or three days before the trial of this case, the Indictment in this case was read to you, was it not?

[fol. 370] A. Yes, sir.

Q. By the District Attorney?

A. Yes, sir.

Q. In charge of this case?

A. Yes, sir.

Q. And upon your being asked to state your plea, whether you were guilty or not guilty to the charge contained in the Indictment here, you said you were guilty, did you not?

A. I did.

Q. You personally interposed that plea, did you not?

A. Yes, sir.

Q. Now, going back to another matter when you arrived out at the James home on Sunday night, in the early part of August, do I understand that you state that you saw some dead chickens in the garage?

A. Yes, sir.

Q. How many?

A. Oh, I don't know; there was four or five of them.

Q. That was just a few moments before you picked up the box with the rattler in it and took it in the house, is that right?

A. That is right, yes, sir.

Q. Now, when you last saw Mrs. James on the morning of Monday morning, she was dead?

A. I thought she was, yes, sir.

Q. And when you had seen her last prior to that was the [fol. 371] previous afternoon, is that right?

A. Right.

Q. At that time she was apparently alive, is that right?

A. Yes, sir.

Q. You didn't speak to her, or say anything to her?

A. No, sir. There was not a word spoken in the house.

Q. Not a word said by anybody?

A. No, sir. Your Honor, may I have a glass of water, please?

The Court: Yes. Mr. Perdue, give the witness a glass of water, please.

By Mr. Parsons:

Q. Now, Mr. Hope, you knew, did you not, when you were out at the James home upon this last occasion in August, in the early part of August, that Mrs. James was in a family way, pregnant, did you not?

A. So I had been informed.

Mr. Parsons: That is all.

Redirect examination.

By Mr. Williams:

Q. Mr. Hope, you said something about having delivered this dried venom to Mr. James. Did you have any conversation with him at the time you delivered it to him?

A. Yes, sir I did.

Q. Will you state what the conversation was?

Mr. Parsons: Will you state the time and place, please?

[fol. 372] Mr. Williams: Just tell us as nearly as you can the time and place where you had the conversation?

A. The time I moved out there I had this little bottle of stuff—I had forgotten all about—in my suitcase. I had received this from Mr. Kirby when I was down procuring the first three rattlesnakes. My story that I was to tell at that time, that I was conducting experimental purposes, and Mr. Kirby very kindly gave this to me to continue my experiments with, and I really didn't know what it was, only that he said it was dried whatever they call it, from a rattlesnake.

Q. Now, who told you to tell the story that you were engaged in experimental work?

A. Mr. James.

Q. Was that before you went to Kirby?

A. Yes.

Q. Now, when you gave this bottle to Mr. James, this bottle of venom, what conversation did you have with James?

A. He said he didn't want it.

Q. What did you do with it?

A. I don't remember what became of it. I may still have it; I don't know.

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[fol. 373] MRS. EDNA HOPE, called as a witness in behalf of the People, being first duly sworn, testified as follows:

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Direct examination.

By Mr. Williams:

Q. Mrs. Hope, you are the wife of Charles H. Hope, who just left the witness stand?

A. Yes, sir.

Q. Do you remember the 3rd day of August, 1935?

A. Yes, sir.

Q. Did you see Mr. Hope on that day?

A. He called for me where I was working, between 1:30 and 2:00 o'clock.

Q. And did you go someplace with him?

A. Yes, sir.

Q. Did you observe the make of car in which he was riding at that time?

A. He was driving a Plymouth sedan.

[fol. 374] Q. And did you observe the color of that car?

A. It was a little tan car.

Q. Did you observe the license and registration in the car?

A. I had observed that the car was registered to Lois Wright.

Mr. Parsons: I move to strike that out.

The Court: That is merely a description of the automobile.

By Mr. Williams:

Q. When you started out that day, where did you go?

A. Over Colorado Boulevard to Pasadena.

Q. And to what point did you go?

A. We stopped someplace on the way and had lunch at a lunch place, and I don't remember the street, but we drove in front of a snake farm, I believe.

Q. Did you go into the place?

A. No, sir, I didn't get out of the car.

Q. Did Mr. Hope go in the place?

A. Mr. Hope took a box and went around to the side of this barn.

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By Mr. Williams:

Q. Did anybody come with him?

A. I saw a man with him in the yard, and he came back to the car.

[fol. 375] Q. Did you recognize that man in the yard?

A. Yes.

Q. And do you see him here in the courtroom?

A. I saw him back there a while ago. I believe they called him "Snake Joe."

Q. The gentleman that just stood up?

A. Yes.

Q. And after Mr. Hope came up, did he come back to the car again?

A. Yes, sir.

Q. Did he have a box with him?

A. He had a box which he put in the car.

Q. Where did you go then?

A. We drove back to Los Angeles, and he let me out where I lived. He stopped to telephone. He came back to the car and left me there.

Q. Did you see him again afterwards?

A. That evening later, between 7:00 and 7:30, I would say. We were driving our car at that time.

Q. Did you spend that evening with him?

A. Yes, sir, I spent that evening with him. We went down and had dinner, and went to a show.

Q. Then on the following day did you see him?

A. The following morning I saw him between 9:30 and 10:00 o'clock. He had breakfast with me.

[fol. 376] Q. Thereafter did you go someplace?

A. He told me he had to be out——

Q. Never mind what he said.

A. Well, we went to La Canada.

Q. How did you go to La Canada?

A. In our coupe.

Q. Do you know where the James place is in La Canada?

A. I have seen it since then.

Q. Did you go to a place near that place?

A. He parked the car a block away from the James place.

Q. And then what did you do?

A. He told me to wait for him there, and that he would be back in half an hour.

Q. Did he leave you there?

A. Yes, sir.

Q. Did you see him again later?

A. He came back within 15 or 20 minutes. He told me he would not go back——

Mr. Clark: That would be hearsay.

The Court: What he said will be stricken.

A. He came back to the car.

By Mr. Williams:

Q. When he came back did he have some conversation with you, without saying what it was?

A. Yes, sir.

Mr. Clark: Just a moment.

The Court: You may proceed.

[fol. 377] Mr. Williams: I understand that counsel——

Mr. Clark: I was going to object, but I do not think that it is of enough importance to delay the Court.

By Mr. Williams:

Q. Was there an answer to that question?

The Court: "Yes."

By Mr. Williams:

Q. After you had the conversation, what did you do?

A. I drove back to Los Angeles.

Q. Did he go with you?

A. No, sir.

Q. Did you see him again later that day?

A. Yes, sir.

Q. When and where?

A. I saw him a little bit before two o'clock.

Q. Where?

A. I was visiting a friend of mine, and as I came out the front he drove up in front of the place in Mr. James' car, and honked the horn.

Q. Where was that?

A. The corner of Willowbrook and Macy Street.

Q. That was what time?

A. A little before two o'clock.

Q. What then did Mr. Hope and you do?

A. I followed him around several blocks to where I lived, in our car, and got into the car with him, and drove back out to Pasadena.

[fol. 378] Q. Now, before coming to your driving back to Pasadena, when you got into the James car with him, did you observe anything?

A. I notice some boxes in the back of the car. There was also a bad odor about the car.

Q. Was there anything done with these boxes, or sacks, at that time?

A. He took a sack out of the car.

Q. What did he do with it?

A. Put it in the back of the Durant.

Q. The Durant being your car?

A. Yes, sir. I parked it right beside there.

Q. Then where did you and Mr. Hope go? Out to Pasadena again?

A. Out to Pasadena, where we went the day before.

Q. Did Mr. Hope get out of the car?

A. Yes, sir, he got out of the car, and took the box inside. He took the box inside, and was in there several minutes, and he and this chap came out.

Q. By "chap" who do you mean?

A. His name is "Joe", I believe.

Q. Snake Joe?

A. Yes. They went to the corner. I turned and went down to the boulevard, honking my car.

Q. Did Mr. Hope then come out?

A. Yes, sir, he came out then.

[fol. 379] Q. Where did you go then?

A. Down towards Venice beach.

Q. On the way down there did you and Mr. Hope do anything?

A. On La Cienega Boulevard Mr. Hope took a box and threw it in the weeds.

Q. About what time of the day or night was that?

A. It must have been about 4:30.

Q. Then where did you go?

A. We started back, and started east on Venice Boulevard, and back to Los Angeles, and he had another box that he threw out, that had a glass top on it, by the railroad there.

Q. From there where did you go?

A. We went back to Los Angeles, and stopped and had something to eat, and he had an engagement to play cards.

Q. Did you go over there with him?

A. Yes, Mr. Hope and I went together.

Q. You were in James' car?

A. Yes, sir, we were in Mr. James' car.

Q. And where did you go?

A. He took me home.

Q. And then he left you?

A. Yes, sir, and then he left me.

Q. That was on what day of the week?

A. That was on Sunday.

Q. That was the day following the 3rd of August?

A. Yes, sir.

[fol. 380] Q. Did you see Mr. Hope again that night?

A. No, sir.

Q. Did you see him the next day?

A. I saw him the next morning as I was getting my breakfast, around 8:00 o'clock, or between 8:00 and 8:30.

Q. At what place?

A. At my home.

Q. And did he come into your home?

A. Yes, sir.

Q. And did you observe his appearance, and his demeanor and manner at that time?

A. Yes, sir.

Q. What was it?

The Court: Just one moment.

Mr. Clark: There will be no objection.

The Court: You may answer.

A. He was white and jittery, and had been drinking.

By Mr. Williams:

Q. Did you and he go any place then?

A. He took me to work.

Q. Did you see him again that day?

A. Around noon time. He came after me, and took me back to the apartment.

Q. When you got to the apartment did you see anything?

A. There was a blanket around a bundle in the middle of the floor, and another blanket. One blanket was wrapped up like a bundle.

[fol. 381] Q. Now, what, if anything, was done with those blankets, if you know?

A. I sent the blanket, a white checked blanket, to the laundry. I had some laundry to go. He said he had some laundry.

Q. What did he say? He sent the blanket to the laundry, you say?

A. Yes, sir, he sent the blanket to the laundry. We had a bundle of laundry, and we took it.

Q. Then where did you go?

A. Back to the office.

Q. When you got back to the office did Mr. Hope drive you in his car?

A. He got off and said he had things he wanted to burn.

Mr. Clark: Just a moment.

The Court: Well, that part may be stricken.

A. I saw him place a bundle in the incinerator back of the place. It had the appearance of a gunny sack.

By Mr. Williams:

Q. I show you a blanket which has been marked as People's Exhibit 16, and ask you if you recognize that?

A. Yes, that was the blanket that was on the floor.

Q. And do you recognize either of the blankets, People's Exhibits 17 and 16?

A. Yes, sir. The other was in the car.

Q. And referring to People's Exhibit 15?

[fol. 382] A. Yes. The other blanket was in my laundry bundle when it came back. I didn't see it until it was returned from the laundry.

Mr. Williams: That is all. You may cross-examine.

Cross-examination.

By Mr. Clark:

Q. Mrs. Hope, you have already been informed, before you took the stand here, that your husband is awaiting sentence for the murder of Mrs. James?

A. Yes, sir.

Q. You love your husband, do you not?

A. Yes, sir.

Q. You are desirous of helping him as much as you can in his present difficulty, aren't you?

A. I am.

Q. What time Monday did you say it was that you saw your husband?

A. Between 8:00 and 8:30.

[fol. 383] Q. How long were you with him?

A. I had to be at work at 9 o'clock. It was probably 30 or 40 minutes.

Q. You saw no more of him that morning?

A. I saw him from 9:00 until noontime.

Mr. Clark: That is all.

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Q. And when you told the facts to the District Attorney's office, you then loved your husband, didn't you?

[fol. 384] A. Yes, sir.

Q. And you then wanted to help him all you could, didn't you?

A. Yes, sir.

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MRS. ETHEL SMITH, called as a witness in behalf of the People, being first duly sworn, testified as follows:

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Direct examination.

By Mr. Williams:

Q. Mrs. Smith, do you know the defendant in this action?

A. Yes, sir.

Q. Are you related to him?

A. Yes, sir.

Q. What is the relationship?

A. He is my uncle.

Q. Did you know Mary James during her lifetime?

A. Yes, sir.

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[fol. 385] By Mr. Williams:

Q. Do you remember the day of August 4th, Sunday, 1935?

A. Yes, sir.

Q. Were you at or near the residence of Mr. James at 1329 West Verdugo Boulevard in La Canada on that day?

A. Yes, sir.

Q. And who was with you?

A. My husband and my mother-in-law and my father-in-law.

Q. By what means did you arrive at that place?

A. In our car.

Q. What time of the night or day did you arrive there?

A. 3 o'clock in the afternoon.

Q. Just state what you did at or about the premises.

A. We drove up in the yard and the car was gone. I said, "They are not at home."

Q. Never mind what you said. Now, just tell what you did without saying anything that anybody said during the time that you were there.

A. I got out of the car and tried the back door, and the back door was locked. I sat down and wrote a note and [fol. 386] stuck it in the front door, and then I went around the house and my mother-in-law and father-in-law and they were standing by the kitchen. I walked all through the yard, the front yard, and alone I went in the back yard and picked some oranges and plums.

Q. Now, did you look into the house?

A. I tried and the shades were all down.

Q. Was that true all around the house?

A. Yes, sir.

Mr. Williams: May I have the exhibits, please, in the basket?

Q. How long were you at the house, Mrs. Smith?

A. 15 or 20 minutes.

Q. I will show you now a piece of paper which has been marked People's Exhibit 3 for identification and ask you to examine that and state whether you recognize that.

A. Yes, sir.

Q. What is it?

A. It is the note that I wrote.

Q. After writing it what did you do with it?

A. I stuck it in the crack in the front door.

Q. That is the door that opens on the front porch of the James' house?

A. Yes, sir.

Q. And about what time of the day was it?

A. About 5 o'clock.

[fols. 387-388] Q. On Sunday?

A. Yes, sir.

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[fol. 389] Q. Now, Mrs. Smith, I wish you would try to speak loud enough that I can hear you. I know it is difficult, but it is necessary that everybody in the court room be able to hear what you say. Did you have a conversation with Mr. James at that time?

A. Yes, sir.

Q. Just state the conversation.

Mr. Clark: That is objected to upon the ground that no foundation has been laid in that the corpus delicti has not been proved, without the declarations or admissions of the defendant, and that the evidence is incompetent.

The Court: Objection overruled.

Mr. Williams: Just state the conversation, Mrs. Smith.

A. He said he found my note Monday night. He said, "Why were you there on Monday? Were you leaving on your vacation?" I said, "No, I was there Sunday." He said, "You were?" and I said, "Yes." He said, "Where did you go when you left there?" and I said, "We drove up to Mount Wilson" and he said he did too, with his wife, Mary.

Q. What else was said?

A. He asked me if the officers were there to take your names as you drove up into the mountains, and I said, "No."

Q. Was that the extent of your conversation?

A. Yes, sir.

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[fol. 390] Q. Mrs. Smith, shortly after the marriage, did you see the defendant, James, at your house?

A. I don't remember.

Mr. Parsons: I can't hear you.

A. I don't remember.

By Mr. Williams:

Q. Well, did a trunk come to your house?

A. Yes, sir.

Q. Did you have any conversation with Mr. James about that trunk?

A. Not at that time.

Q. At any time?

A. Several days later.

[fol. 391] Q. All right. Where did you have the conversation?

A. It may be over the telephone, I don't know.

Q. What was said?

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[fol. 392] A. I told him that when I came home I found his trunk and he said, "Yes", he brought it out.

Q. Where did you find that trunk?

Mr. Clark: That is objected to upon the ground that it is irrelevant.

The Court: Overruled.

A. Sitting on the back porch.

By Mr. Williams:

Q. What, if anything, did you do with the trunk?

Mr. Clark: That is also objected to on the ground that it is irrelevant.

The Court: Overruled.

A. Put it out in the garage.

By Mr. Williams:

Q. Thereafter, did you put anything into that trunk?

Mr. Clark: That is objected to upon the ground that it [fol. 393] is both irrelevant and immaterial.

A. No, sir.

Mr. Williams: Stand up, Mr. Griffen.

(Gentleman stand- in courtroom.)

[fol. 394] Mr. Clark: If your Honor please, to expedite matters, it will be stipulated by me that there was a certain occasion when Mr. Griffen was out to the house of the wit- [fols. 395-397] ness and when her attention was directed to this trunk.

Mr. Williams: That will help. I accept that.

Q. Now, I show you some rope, which has been marked People's Exhibit No. 11 for identification, and ask you whether or not you have seen that rope before?

A. I have.

Q. When and where?

A. Taken out of the trunk in the garage.

Q. And by "the trunk", what trunk do you refer to?

A. My uncle's trunk.

Q. And by whom was it taken out?

A. Mr. Griffen.

Q. In your presence?

A. Yes, sir.

The Court: So it may be identified, when you say "the trunk", which trunk do you mean?

A. My uncle's trunk.

The Court: That was Mr. James' trunk?

A. Yes, sir.

[fol. 398] CHARLES GRIFFEN, called as a witness in behalf of the People, being first duly sworn, testified as follows:

Direct examination.

By Mr. Williams:

Q. Mr. Griffen, what is your occupation?

A. I am Assistant Chief of the Bureau of Investigation of the District Attorney's Office of Los Angeles County.

Q. Are you acquainted with Ethel Smith who was recently on the witness stand?

A. I am.

[fol. 399] Q. Did you visit her house within the last few months or weeks?

A. I was there on the 8th day of May, this year.

Q. And at that time, did you observe a trunk in the garage?

A. I did.

Q. And did you open and examine the contents of that trunk?

A. I did.

Q. I will show you now People's Exhibit No. 11 for identification and ask you whether you at that time saw this exhibit?

A. I did.

Q. Where did you see it?

A. Found it in the trunk that was pointed out to me by Mrs. Smith.

Q. Did you, at that time, make any mark of identification upon the rope?

A. I did. On each cut end I place the initial "G".

Q. Is that rope, so far as you can tell now, in the same condition as it was at the time you got it?

A. I can tell by examining all of the ends. It is.

Mr. Williams: We offer this in evidence at this time, if your Honor please, as people's Exhibit No. 11.

Mr. Clark: Just one moment. I think I will have to object to the rope, your Honor, upon the ground that it is both [fol. 400] irrelevant and incompetent, that it has not been in any way identified as having been used for any unlawful purpose and no foundation has been laid in that respect for its introduction.

The Court: It will be received at this time as Exhibit 11, under the rule as to similar objects, it having been declared by the witness Hope to be similar to the rope which was used and which he saw used.

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ROLAND H. KIRBY, called as a witness in behalf of the People, being first duly sworn, testified as follows:

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Direct examination.

By Mr. Williams:

Q. What is your occupation, Mr. Kirby?

A. Research work.

Q. Where are you located?

A. At the present time in Long Beach, California.

Q. Were you located in Long Beach, California, in the month of June and July, 1935?

A. Yes, sir.

[fol. 401] Q. At what place in Long Beach?

A. On the corner of Terminal and Midway.

Q. And where is that?

A. It is east on Ocean Avenue to the Belmont Bar, possibly a block and a half.

Q. What is the nature of the business there?

A. It is known as a "Kiddie Ride", for children, an amusement ride.

Q. Did you have at that time any interest in that place?

A. I did.

Q. Do you know Charles H. Hope, who was on the witness stand earlier in the day?

A. I do.

Q. Where did you first see him?

A. Well, I don't know the exact date, but approximately some time between—I would say some time in July, before the 10th of July.

Q. Of what year?

A. Of last year.

Q. Where did you meet him?

A. He came to my place of business.

Q. Did he at that time purchase anything from you?

A. Yes, sir.

Q. What?

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[fol. 402] A. Rattlesnakes.

Q. How many?

A. Three.

Q. Were those rattlesnakes paid for by you?

A. Yes, sir.

Q. How much?

A. \$5.00, if I remember right, more or less.

Q. Did you at that time deliver to him anything other than rattlesnakes?

A. I did.

Q. What?

A. Some crystallized rattlesnake venom.

Q. And in what sort of a wrapping, or container was that?

A. A small jar.

Q. What conversation, if any, was had between you and [fols. 403-407] Mr. Hope at that time?

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[fol. 408] By Mr. Williams:

Q. Now, Mr. Kirby, I will repeat the question. What was the conversation had between you and Mr. Hope at the time of the transaction concerning which you have just testified?

A. He asked if I had some snakes with fangs, and poison, practically the same as you would find in the wilds, and I said "Yes." He purchased three snakes from me, telling me that it was for research work, and experimental purposes. I, myself, being interested in that line of work, voluntarily offered him some crystalized rattlesnake venom, which might be of some use in his experiments.

[fol. 409] Q. Was that the extent, or the substance of the conversation that you had at that time?

A. Yes, sir.

Q. Did you see him at a later time?

A. I did.

Q. How soon after the first time was it that you saw him the second time?

A. Sometime after the 10th of July.

Q. Mr. Kirby, you say you have been engaged in research work in connection with snakes for some considerable period of time?

A. I have.

Q. How long?

A. Oh, 11 years I would say, approximately.

Q. And during that period of time what has been the work that you have done?

A. Lecturing to biology classes, also a little bit of show work, exhibits, nature study classes.

Q. Have you made any particular study of the rattlesnake?

A. I have been called on experiments that have been taking place at different institutes in regard to the effect of snake poison.

Q. Have you ever seen a snake bite anybody?

A. Yes, sir.

Q. A rattlesnake?

A. Yes, sir.

[10l. 410] Q. And whom?

Mr. Clark: Is that material?

The Court: Well, it might be.

Mr. Clark: All right.

A. Well, I have received a bite, myself.

By Mr. Williams:

Q. Now, I will show you a small vial and ask you to examine that and state whether you know the substance which is in that bottle?

A. Yes, sir.

Q. What is it?

A. That is crystallized rattlesnake venom.

Q. Is it similar in character to that which you gave to Mr. Hope?

A. Yes, sir.

Q. I will show you another vial, and ask you to examine that, and state what that contains?

A. Those are the main fangs, and secondary and third fangs of rattlesnakes.

Q. Are you able to tell from among these which is the main fang?

A. Yes, sir.

Mr. Williams: I wonder, if your Honor please, if it would be satisfactory if we had him remove a couple of the main fangs from this bottle. I am not interested in the other fangs particularly.

The Court: I think so, yes.

[fol. 411] Mr. Clark: They have been sterilized, I take it, haven't they, sir?

A. No, sir.

Mr. Williams: I may say to counsel that in handling these things that I am informed that one should be very careful not to scratch the skin, because it might be serious.

Mr. Clark: That is why I asked. I didn't ask the question facetiously.

By Mr. Williams:

Q. This object which you have just removed from the vial is what?

A. That is what is termed the cup fang, or in other words, the main fang.

Q. Is that the fang through which the poison is injected when the snake bites?

A. Yes, sir.

Mr. Williams: May we, for the purpose of illustration, offer this fang in evidence at this time?

The Court: I think it would be better if it were enclosed in something.

Mr. Clark: I have no objection, other than the general objection that has been urged heretofore, so long as it is offered merely for the purposes of illustration.

Mr. Williams: I have a glass vial which the witness has very kindly given to me, your Honor. I will put this fang in the vial. I don't know whether I will, or not. It doesn't slip into this vial. The witness has handed me a little box [fol. 412] containing three fangs, if your Honor please. May I offer those in place of the one fang offered?

The Court: Just one thing, I think it would be so much better if we had some sort of a vial to put them in.

Mr. Williams: Suppose I offer them in this box, and get a vial in the meantime.

Mr. Clark: I have no objection, your Honor, to any change in receptable that may be necessary or convenient, and I make no objection, other than the general objection that was interposed.

The Court: I just want to ask Mr. Kirby one question. Those three are each of them main fangs?

A. Two of them are cup fangs, and the other is a secondary fang.

Mr. Williams: You had better remove the secondary fang.

A. All right.

Q. Now, this box contains two main fangs, is that correct?

A. Correct.

The Court: Now, previous to that you introduced another exhibit, or referred to one. We will mark the vial contain-

ing the rattlesnake venom 18 for identification only, and 19 is the box containing the two cup fangs.

By Mr. Williams:

Q. Now, Mr. Kirby, what is the effect, so far as the matter of pain is concerned, resulting to the individual struck by the bite of a rattlesnake?

A. There is a great deal of suffering with it, very severe [fol. 413] pain, later on becoming nauseated to your stomach, and beginning of swelling; in a short time after that the discoloration gradually beginning to follow the swelling up.

Q. In the case of your own bite, for how long did the swelling continue to increase?

A. Approximately 36 hours after I received the bite I had reached the top, or in other words, the peak of the swelling and discoloration.

Q. And how long did the pain continue?

A. Clear through to the 36th hour, and I was bothered with severe sharp pains thereafter for several weeks.

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[fol. 414] MIKE ALLMAN, called as a witness in behalf of the People, being first duly sworn, testified as follows:

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Direct examination.

By Mr. Williams:

Q. Mr. Allman, what is your occupation?

A. I am a showman at the present time.

Q. What particular kind of a show do you operate?

A. We run a reptile exhibit.

Q. Where?

A. At the present time at Long Beach, but I have been connected with Ocean Park.

Q. During the month of July, 1935, where was your exhibit?

A. About 200 out on the pier, No. 200.

Q. That is Ocean Park, California?

A. Yes, Ocean Park.

Q. Now, just state generally what the general nature of that Exhibit was?

A. We have about between 150 and 200 snakes of different kinds, all kinds that you can really purchase all over the United States, practically.

Q. Where do you keep the snakes?

A. We keep them in the pit. We have boxes made back underneath, with doors on them. We let them go back in there to bed at night, and then lock them up. They stay [fol. 415] in there all the time.

Q. Describe the pit.

A. It is about 30 by 40; somewhere in that neighborhood, inside.

Q. Is it oblong, round or square?

A. It is squared off.

Q. Where do the people stand to look in?

A. We have a railing on it something like this, only a little higher, with the top covered with burlap, and padded so the people can rest on it.

Q. The people who are observing the snakes are standing higher than the floor of the pit?

A. Yes, the floor of the pit sets down 7 feet underneath.

Q. During the month of July did you get into that pit and give exhibitions with snakes?

A. Yes, sir.

Q. Do you know the defendant, sitting in this courtroom?

A. Yes, sir.

Q. And do you know Charles Hope, who a little earlier in the day testified on the witness stand here?

A. Yes, sir.

Q. When and where did you first see these men?

A. I was working one afternoon. There was about eight or ten people in there, and I didn't notice them come in at first, but as they drift in one or two at a time, I don't know [fol. 416] whether they came in separate, or together, because I didn't see them come in, but it seems to me they had a couple of drinks, and they both got noisy to start with, and I have had lots of people in my place do the same thing, and I ignore them, don't pay any attention to them, but they kept getting noisy and annoying other people, and I began to get annoyed, myself, so I turned around—

Mr. Clark: I think it should be question and answer, your Honor.

Mr. Williams: I didn't hear what Mr. Clark said?

Mr. Clark: One of the reasons I interrupted, your Honor, the general objection that I made before the argument will be deemed to apply to the same subject matter in this witness' testimony?

The Court: Yes.

By Mr. Williams:

Q. Did you have any conversation with this defendant?

A. Yes.

Q. State what the conversation was.

A. I explained all the snakes to them, first, and they listened to it, and finally they kept insisting I didn't have any snakes in there that was poison, that I had removed the fangs. I didn't pay much attention to them, kept talking to other people, and finally Mr. James made a remark about betting me there wasn't a poison snake in my pit, and I got sore and was going to take him up, and he bluffed out, so they walked out, I guess. I didn't notice them [fol. 417] when they went out.

Q. Did you see either of them at any time after that?

A. Yes, sir.

Q. How soon after that?

A. I think it was the following day, if I am not mistaken.

Q. Which one did you see?

A. Mr. Hope.

Q. Did you have any conversation with him at that time?

A. Yes, sir.

Q. Did you have any transaction with him?

A. Yes, sir.

Q. What was the transaction?

A. When he came in he brought—

Q. Just don't tell us about the conversation. What was the transaction?

A. I sold him a rattlesnake.

Q. And in connection with that transaction did you have some conversation?

A. Yes, sir.

Q. What was the conversation?

A. Well, when he came in he had a box about so big, and a glass top on it, sliding top. I didn't know what was

in the box when he first came in, and I thought he had a couple of rattlesnakes, and I was busy talking to some of my people, and I told him to wait a minute, and he called me, and I went over and he said, "Come outside." And [fol. 418] in this box he had a white rabbit about half grown, and he said he had made a bet with Mr. James of \$50.00, that is, Mr. James had bet him \$50.00 that we didn't have a poison snake in the place, and he had been playing poker with him, and had lost about \$100.00, and he had a chance to get about \$50.00 of it back, if I would sell him a snake and guarantee it was poison, so I sold it to him. He wanted me to put the rabbit in the box with the snake, and kill it, to show that it was poison. I said, "No, the Humane would be on my neck in a minute, but", I said, "I will sell you the snake and you can take the rabbit wherever you please and test it out, because I know it is poison." And I sold him the snake.

Q. Did you charge him for the snake?

A. I charged him \$3.00.

Q. Did he pay you?

A. Yes, sir.

Q. Did you see him again thereafter?

A. Not until he came down to the place on a Sunday.

Q. This last time that you saw him, when was that?

A. Who, James or Hope?

A. Hope.

A. Mr. Hope, the last time I seen him he came down there with all the boys from the District Attorney's office. I don't know what Sunday it was now. I think it was in May some time.

[fol. 419] Q. At any rate, until he came down in May with the officers you hadn't seen him since this time?

A. Not since the transaction.

By Mr. Clark:

Q. Now, let me see, Mr. Allman, how many times altogether did you see Mr. James at your place of business?

A. Once was all I ever remember.

Q. And on that occasion you also saw Mr. Hope?

A. Yes, sir.

Q. You have been in attendance upon the court here for some days, have you not?

A. Yes, sir.

Q. You heard the testimony of Mr. Hope upon the witness stand, didn't you?

A. Yes, sir.

Q. You, yourself, testified before the Grand Jury in regard to this matter upon the 6th day of May, did you not?

A. Yes, sir.

Q. And at that time the facts were fresh in your recollection?

A. Yes, sir.

Q. May I be pardoned to come around and stand by you so that you and I may look at this transcript together? I will ask you if it is not a fact that in testifying before the [fol. 420] Grand Jury you testified as follows—I direct your attention, Gentlemen, to the Grand Jury transcript, at page 42, to get the connection, at line 23: “Q.—And did they have any conversation with you? A.—Yes, sir. I was playing with the rattlesnakes, as I generally will do, making them strike, and working around pretty close to them, and they got an idea the way a lot of people figure those snakes are harmless, but we don't remove any fangs from our rattlesnakes, and I told them that. Well, one guy—Mr. Hope—he was the one that was a little bit, wanted to argue about it. He says, ‘Those snakes are not poisonous.’ I said, ‘Certainly they are poisonous.’ ‘Well,’ he says, ‘do you want to bet \$20.00 on it?’, something like that. I said, ‘Sure, I will cover the bet.’ ”

Didn't you so testify before the Grand Jury, Mr. Allman?

A. Yes, I did.

Q. Now, I will ask you, Mr. Allman, if you didn't see Mr. James at your place of business upon some later occasion than that, of the conversation we have just read, some of the officers being present?

A. Yes, sir.

Q. Some conversation occurred between you, Mr. James and the officers there on that occasion, did there not?

A. Yes, sir.

[fols. 421-427] Q. Do you know the names of those officers?

A. No, I don't.

Q. Neither do I, so I can't name them to you. You were asked by somebody whether or not you could identify Mr. James, weren't you?

A. Yes, sir.

Q. And you were asked whether you could identify Mr. Hope, weren't you?

A. Yes, sir.

Q. Mr. Hope was there also, wasn't he?

A. Yes, sir.

Q. And it is a fact, is it not, that you said to those parties there that you could identify Mr. Hope, but you weren't sure of Mr. James?

A. Yes, sir.

Q. You say you didn't say that?

A. I did.

Q. Pardon me. That is all.

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[fol. 428] IRVING SHERMAN, called as a witness in behalf of the People, being first duly sworn, testified as follows:

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Direct examination.

By Mr. Williams:

Q. Mr. Sherman, what is your occupation?

A. Right now, I am not doing anything.

Mr. Barnes: Will the Court instruct the witness to tell us his father's name?

A. Mr. Marcus Sherman.

By Mr. Williams:

Q. What is his business?

A. Right now——

Q. What is his business generally?

A. He is in the cabinet business.

Q. Was he engaged in that business in Los Angeles, in 1935?

A. He was.

Q. And were you working for him at that time?

A. I came down to his place of business every afternoon.

Q. Do you know Mr. Hope, who testified today in this courtroom?

A. I do.

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[fol. 429] By Mr. Williams:

Q. Did he buy two boxes which he had your father and you make for him on July 28th, 1935?

A. Yes, sir.

Q. Did he pay \$5.00 for those two boxes?

A. Yes, sir.

Q. Just describe the boxes.

A. Well, the boxes were so built that—they were made of wood and I believe they had a sliding, glass top. I am not sure whether the top was made of sliding glass, but it don't make any difference. In the back and on the top and perhaps on the end, there were a few holes bored for ventilation purposes, and there was a sliding top.

Q. What was the approximate size of the box?

A. Well, the boxes were about 20 or 22 inches long and about 9 inches high and—I am not sure about the width, [fols. 430-463] and maybe 10 or 12 or 15 inches in width.

Q. That was approximately the size of this box.

A. Yes, sir.

Mr. Clark: I would like to ask whether the witness has the means of ascertaining that measurement?

The Court: Have you any record?

A. I don't believe there is any evidence.

The Court: There were no drawings or anything made?

A. No, sir.

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[fol. 464] Mr. Clark: Just one moment. I wanted to ask counsel to approach the bench.

(The following proceedings were had at the bench, out of the hearing of the jury:)

OBJECTIONS TO EXHIBITION OF SNAKES

Mr. Clark: I understand that during the course of this testimony that the District Attorney intends to bring into the courtroom two live rattlesnakes. I have no doubt but that they come from the south, and whether they are from the south, or whether they are from the north, I do not believe that the snakes are admissible in evidence, and I

feel that the bringing of the snakes into the courtroom in such a manner as is indicated will be highly prejudicial to the case, and there would be no other purpose than just to excite the passions of the jury. I hope I have made my [fol. 465] objection and my assignment of misconduct sufficiently explicit that there will be no question about it.

Mr. Williams: That was my intention, to bring the actual snakes that were at the house that day, that were bought from Mr. Houtenbrink, and returned thereafter to him.

The Court: Well, we will let the record show that as far as the rights of the defendant are concerned, that this Court will assume, and it will be assumed that having knowledge concerning the procedure contemplated by the District Attorney, and that it is not a form of assignment of misconduct, but merely in the nature of objection, and that if the objection be sustained, the Court will expect defense counsel to expect that the jury be instructed, and that if the objection be overruled, the order overruling the objection will be for the purpose of this record also denying the request for the instruction, so an instruction will not be necessary, and it is implied by the overruling of the objection by the Court.

Mr. Clark: As I understand, your Honor expects us to make an objection.

The Court: Yes, the objection can be considered as made. You may proceed with the examination.

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[fol. 466] JOE HOUTENBRINK, called as a witness in behalf of the People, being first duly sworn, testified as follows:

The Clerk: State your name, please.

A. Joe Houtenbrink.

Direct examination.

By Mr. Williams:

Q. Mr. Houtenbrink, you are the fellow commonly referred to as "Snake Joe", are you?

A. Yes, sir.

Q. What is your occupation?

A. Well, I operate a snake farm.

Q. Where is your snake farm located?

A. It is at 2671 West Valley Boulevard.

Q. And where was your snake farm in the month of July, 1935?

A. At 42 Cypress Street, east Pasadena.

Q. Did you at that time own a number of rattlesnakes?

A. Yes, sir.

Q. And do you know Charles Hope who testified on Thursday and Friday as a witness in this case?

A. Yes, sir.

Q. When and where did you first see him?

Mr. Clark: Just one moment. At this time the question now pending, I think, applies to the line of examination that we discussed being made. At this time we object to [fol. 467] any testimony of any conversation that Mr. Hope had with Mr. Houtenbrink, on the ground that it was outside of the defendant's presence, and on the ground that such matters are irrelevant, and no foundation has been laid for the introduction of the same.

The Court: Barring such specific questions as are applicable under the line of the examination indicated, along that line, the objection is overruled.

Mr. Clark: Then it will not be necessary for me to make further objections unless there is some specific reason develops?

The Court: Unless it is specifically objected to, why, the objection is overruled. Counsel has in his mind what I have stated. On the general subject matter it might be generally hearsay, and the conversation might be objectionable on some other ground. However, the general objection at this time is overruled.

By Mr. Williams:

Q. I think the question was when and where you first met him?

A. As far as my recollection, it was on August 3rd, the way it appears in the book.

Q. 1935?

A. 1935.

Q. Where?

A. At 42 Cypress Street, Pasadena.

Q. Did you on that day have a business transaction with [fol. 468] him?

A. Yes, I sold two rattlesnakes.

[fol. 469] Q. And do you remember the kind of rattlesnakes they were?

A. Diamond-back or *Crotalus Atrox*.

Q. How many snakes did you sell him?

A. Two.

Q. Do you know how much you charged him for them?

The Court: Well, we have only had a description of one snake so far, Mr. Williams.

A. Yes, sir. Both of them were the same.

By Mr. Williams:

Q. Both of them the same description?

A. Yes, sir.

Q. How much did you charge for them?

A. \$3.00.

Q. At the time you sold those snakes to him did you have any conversation with him?

A. Yes, sir.

Q. What was the conversation?

A. The way he told me he had a friend—and he said he already bought some snakes from other places and they wasn't hot and he wanted a real hot one and he was told to come over to me to get the snakes, that I handled hot snakes.

Mr. Clark: It is understood that I object to all the conversation?

The Court: Yes.

A. He said a friend and he had a bet on and he wanted to kill a dog and he said if it would kill a dog he would [fol. 470] collect quite a bit of money out of the bet and make up on the bet again, and he wanted to get real hot snakes.

Q. Now, when he got the snakes, did he have anything to put the snakes in?

A. Yes, a glass bottom box.

Q. And did he take them away with him?

A. Yes, sir.

Q. Did you see him again?

A. Yes sir, on August 4th.

Q. About what time?

A. Oh, I should say it was around between 2:00 and 3:00 o'clock, as far as I could judge.

Q. In the afternoon?

A. In the afternoon, yes sir.

Q. Did you, at that time, have a transaction with him?

A. Yes, I rebought the snakes from him. He said the Humane Society stopped him from having the fight.

The Court: Just a moment. I will entertain a motion to strike the conversation.

Mr. Parsons: Move to strike it.

The Court: The last statement attributed to Mr. Hope is stricken out and the jury are instructed to disregard it.

By Mr. Clark:

Q. How much did you pay for the snakes when you took them back?

A. \$1.50, half of the original purchase price.

Q. Do you still have those snakes?

[fol. 471] A. Yes, sir.

Q. The identical snakes that you sold him?

A. Yes, sir.

Q. Are they in here in the court room?

A. If I can see them I will tell you if they are here, yes sir.

Mr. Williams: Will you produce that box?

Mr. Clark: If the Court please, I object to the witness leaving the stand for the purpose of looking at the box that has been brought into the courtroom, or for any other purpose. I object to any snakes being exhibited or introduced into this case. I think this is an appropriate time for me to ask your Honor either by statement of your Honor or some appropriate means to make it appear in the record that two men have just entered the courtroom carrying a box covered with a burlap cloth, and upon their coming down the aisle, the people who were in the courtroom, filling the courtroom, manifested excitement, that several of them rose from their seats, that the attention of spectators and the jury were directed away from the testimony of the witness that at the time I am speaking there is upon the faces of the audience an appearance of anxiety and consternation not heretofore exhibited during this trial.

The Court: The Court has no knowledge that there was

any such manifestation on the part of the audience. The Court is unable to state whether the attention of any person [fol. 472] was diverted or not, nor is there anything to indicate the apprehension that your statement implies; at least, it has not been seen by the Court.

Mr. Clark: In other words, your Honor has no knowledge that the statement I have just made is correct?

The Court: No. That may be your frank, honest opinion as to the facts, however, the Court has not seen any such situation.

Mr. Clark: I will try to find appropriate means of putting those facts in evidence. I think that they are facts and that my statement is appropriately made at this time.

The Court: So far as the physical facts of the two men having taken the box in from the courtroom door and passed up the aisle between the two groups of spectators, through the gate into the inner part of the courtroom and deposited the box by the side of the bench, the record may show that that did occur.

Mr. Williams:

Q. Now, Mr. Houtenbrink, will you step down and examine the box?

Mr. Clark: To which we object.

The Court: The objection to Mr. Houtenbrink stepping down to examine the box is overruled.

Mr. Clark: No objection if I step over here with you, is there?

A. No.

By Mr. Williams:

Q. Now, Mr. Houtenbrink, you may resume the stand. [fol. 473] Did you recognize the object or objects which you saw in the box that you just examined?

A. Yes, sir.

Mr. Clark: That is objected to upon the ground that the evidence is incompetent, irrelevant and immaterial.

The Court: Overruled.

By Mr. Williams:

Q. What were the objects?

Mr. Clark: Same objection.

A. Two rattlesnakes.

The Court: Overruled.

By Mr. Williams:

Q. And were those the same snakes that you sold to Mr. Hope?

A. Yes, sir.

Q. And which he then returned to you?

A. Yes, sir.

Q. As you have described in your testimony?

A. Yes, sir.

Mr. Williams: At this time, if your Honor please, we offer these rattlesnakes in evidence.

Mr. Clark: To which we object upon the ground——

The Court: They will be marked for identification, Exhibit 20.

Mr. Williams: For identification only, your Honor?

The Court: Yes, at this time.

Mr. Williams: You may cross-examine.

Mr. Clark: I move to strike out all of the evidence of the [fol. 474] witness upon the ground that all of the testimony given by him is irrelevant to all of the issues in this case, that it relates to transactions occurring outside of the presence of the defendant, not relating to the crime charged here and that no foundation has been laid for the introduction of such testimony.

The Court: The objection will be overruled.

Cross-examination.

By Mr. Clark:

Q. Will you oblige me by standing up a moment, Mr. James?

(Defendant stands in courtroom.)

Q. This is not the gentleman whom you speak of as Mr. Hope, is it?

A. No, sir.

Mr. Clark: Sit down, Mr. James.

(Defendant does as directed.)

Q. Do you recognize this gentleman as anyone you ever saw before?

A. I have never seen the gentleman before in my life.

Q. You have no knowledge that he ever saw those snakes or either of them, have you?

Mr. Williams: Objected to as calling for a conclusion of the witness.

The Court: Objection sustained.

By Mr. Clark:

Q. So far as your knowledge goes, those rattlesnakes were never in his possession at all, were they?

[fol. 475] Mr. Williams: Objected to as not proper cross-examination.

The Court: Objection sustained.

By Mr. Clark:

Q. You don't know what Mr. Hope bought the snakes for other than what Mr. Hope told you, do you?

Mr. Williams: Objected to as calling for a conclusion of the witness.

The Court: Overruled. Read the question to the witness.

(Question read by the reporter.)

A. No.

By Mr. Clark:

Q. And when was it that you sold Mr. Hope the snakes?

A. I have it in my book as I said just a minute ago, on August 3rd.

Q. You made a memorandum at the time, did you, of the transaction?

A. I made a memorandum of every day's transactions.

Q. Now, when was it that you received the snakes back from Mr. Hope?

A. On August 4th on Sunday. I know very well it was Sunday, because my mother-in-law happened to be there.

Q. What time of day Sunday was it?

A. I should say between 2:00 and 3:00 o'clock.

Q. In the afternoon, you mean?

A. In the afternoon, yes sir.

Q. When Mr. Hope came to your place on August 3rd,

you didn't recognize him as anyone you had ever seen [fol. 476] before, did you?

A. I never seen the man before in my life.

Q. There was nothing about his manner or demeanor at that time that you particularly noticed, was there?

A. No sir, just like any other show man.

Q. He didn't appear to you at that time to be intoxicated, did he?

A. No. I drink myself. I won't say what intoxication is. Just one or two drinks isn't, in my estimation, intoxication.

Q. He hadn't been drinking so that it was noticeable to you?

A. No, sir.

Q. When he returned the snakes was his manner, as nearly as you could tell, the same as when you saw him before?

A. Yes. He had a couple of drinks, is the way it looks, but he wasn't intoxicated. We had some drinks ourselves, I remember, went out and had a glass of beer together.

Q. These snakes, when Mr. Hope came there did he bring any receptacle to put the snakes in?

A. Yes, sir.

Q. What kind of a receptacle did he bring?

A. A wood box with a glass bottom.

Q. Is that the same box that you were looking at a moment ago?

A. No, sir.

[fol. 477] Q. Where did you get the box that was brought into court?

A. It belongs to the State of California.

Q. In other words, that box was furnished you by the prosecution in this case, wasn't it?

A. To put them in, yes sir.

Q. Are they paying you for your testimony here?

A. No, sir.

Q. Haven't they paid you for any advice in connection with this case?

A. No, sir.

Q. Do you expect to receive anything for being here?

A. I don't expect so. I am pretty well broke myself, but then you know—

Q. You have some hopes?

A. I suppose I get \$1.75; it is up to the Court, which I appreciate. I am losing every day.

Q. How much do you say you expect to get?

A. \$1.75. Is that right?

Q. When Mr. Hope brought the snakes back, did he bring them back in the same box that he put them in in the first place?

A. Yes, sir.

Q. And did he leave that box with you or take it away with him?

A. No sir, he took it away with him.

[fols. 478-479] Q. When he took it away, so far as you know, it was empty, I suppose?

A. Yes, it was empty.

Q. And the snakes, when he brought them back, were in about the same condition so far as you could see, as when they went out of your place?

A. Yes, good condition.

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[fol. 480] JOE HOUTENBRINK, resumed the stand and testified as follows:

Cross-examination (Continued).

By Mr. Parsons:

Q. Mr. Houtenbrink, as I understand, you have been in the snake business, and you operate a concern where you have in your possession various kinds of snakes, have you not?

A. Yes, sir.

Q. And you have done so for a great number of years?

A. About five years ago is when I started in.

Q. And during that time, have you observed the habits of various snakes?

A. You asked me how long I had been handling snakes. I have been handling snakes ever since I was a little kid.

Q. You have been in that business for 10 or 15 years?

A. Yes, sir.

Q. And observed snakes while in their native habitat?

[fol. 481] A. Yes, sir.

Q. And you have observed their conduct, have you?

A. So far as I could, yes sir.

Q. And the snakes of the type that are here strike very rapidly, do they not?

A. In what respect?

Q. How is that?

A. In what respect?

Q. May I have that answer read?

(Answer read by the reporter.)

Q. When a snake of the type that is seen here observes a person or a shadow approach them, they strike very rapidly, do they not?

A. This particular kind, yes. They are very mean.

Q. That is a Western Black-Diamond, is it not?

A. No.

Q. What type is it?

A. It is a Western Diamond rattlesnake.

Q. This particular snake as I understand your testimony does strike very rapidly?

A. Correct.

Q. And is it a habit of this particular type of snake to make some observation of an approaching object before it strikes?

A. Well, any kind of a snake, regardless of poisonous or non-poisonous would have that kind of a habit, to make an [fol. 482] observation to see.

Q. They always make some observation, do they not?

A. Certainly.

Q. They don't just arbitrarily strike?

A. No, they have to have something to strike at to be able to strike.

Q. And before striking they make some investigation, to put it simply, is that right?

Mr. Williams: I object to that as calling for a conclusion of the witness.

The Court: It will be sustained. It seems to me it is not proper cross-examination. This witness merely testified to a transaction, and was not qualified as an expert.

Mr. Parsons: That may be a good objection. Will you describe to us the size, as near as you can, Mr. Houtenbrink, the size and dimensions of the box which you state this man whom you sold these snakes to had at the time he called for them?

A. Oh, I should say——

Q. I will get a ruler for you, that perhaps will assist you?

A. That would be the best.

Q. Now, this ruler is 15 inches long, and if you will just mark it here on the space in front of you approximately the length.

A. Oh, well, I would think it was about that long.

Q. From the end——

[fol. 483] A. Yes, to about there.

Q. Will you hold that and I will measure?

A. I would say 18 inches; that would be close enough.

Q. About 18 inches, and how wide was this box?

A. Well, I would say about 12, 11 or 12 inches, somewhere around there.

Q. 11 or 12 inches wide, and how tall was the box?

A. About that tall.

Q. About the same height?

A. Yes.

Q. And was the box wood on three sides, and one side glass?

A. It was wood on five sides and one side glass. That makes a box.

Q. There was only glass on one side, is that right?

A. The top, but you could make it the side if you turned the box over.

Q. Did that glass slip up and down?

A. It slides.

Q. Slid in a track, did it?

A. Yes.

Q. Was there any other opening in the box besides that by moving the glass?

A. Yes sir, there was a hole in the end, if I remember right, for ventilation.

Q. How large was that hole?

[fol. 484] A. I didn't measure it, but I would say about 2 inches.

Q. Was that a square hole, or circular?

A. A round hole.

Q. A round hole; and did it have some covering over it like wire?

A. A screen wire.

Q. And do you recall the color of the box? Was it just in the natural finish?

A. Just a plain wood box in my estimation. Now, as far

as I remember, I didn't look it over closely, you know. There are lots of boxes come in there.

Q. Could you move the glass the entire length of the box in opening it, or did you observe that?

A. I didn't observe that. I believe you could, though.

Q. Did you open up the box in putting the snakes in it?

A. Yes.

Q. How far did you open it?

A. I should judge half way.

Q. That would be about 9 or 10 inches?

A. Yes, that would be about right, maybe a little bit more; I couldn't tell you exactly about that.

[fol. 485] Q. Now, this box that the man returned these snakes in—

A. The same box.

Q. —was the same box?

A. Yes, sir.

Q. Now, in opening the box you slide the glass back 8 or 10 inches, is that right?

A. Well, to my estimation, yes.

Q. So that is about half the length of the length of the snake that you slide the glass back in putting the snakes in?

A. A little over half the length.

Mr. Parsons: That is all.

Mr. Williams: Just a moment. Now, at this time, if your Honor please, we offer in evidence People's Exhibit 20 for identification.

Mr. Parsons: The same objection, your Honor.

The Court: The objection is overruled. It will be received as 20 in evidence.

Mr. Williams: May I have those snakes put up here for the inspection of the jury?

Mr. Parsons: The same objection.

The Court: Objection overruled.

Mr. Parsons: May it be understood, when I refer to that objection, that it was an objection made by Mr. Clark?

The Court: It doesn't make any difference. I have given you the same position as cross-examiner as Mr. Clark.

[fol. 486] Redirect examination.

By Mr. Williams:

Q. Now, I observe something here in this box other than the two snakes. Will you explain what that is?

A. Well, this happened about five days ago, I should say. I believe that both snakes crawled out of their skin.

Q. In other words, they shed their skin, and the dead skin is lying in there?

A. Yes. The box had not been opened up, and I just left it the way it was.

Mr. Williams: Can you see those snakes all right? That is all. I have no further questions.

Mr. Parsons: No further questions. I would like to say that we may want to bring Mr. Houtenbrink in, if we can have his telephone number so that we can get in touch with him.

The Court: Well, you can make the same arrangements that you did with the other witness, I am satisfied.

Mr. Williams: I will call Mr. Houtenbrink, then.

Mr. Parsons: Is it necessary to keep the snakes here?

The Court: No, I don't think so.

Mr. Williams: They can remove the snakes.

The Court: Yes, I think so.

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[fols. 487-489] Miss LOIS WRIGHT, called as a witness in behalf of the People, being first duly sworn, testified as follows:

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Direct examination.

By Mr. Williams:

Q. Miss Wright, do you know, or did you ever know the defendant, Robert James?

A. Yes, sir.

Q. And did you bear any relationship to him?

A. Yes.

Q. What was it?

A. I am his niece.

Q. During the early part of the year 1935 were you living with him in Los Angeles?

A. Yes, sir.

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[fol. 490] Mr. Williams: Miss Wright, do you know Charles Hope who was on the witness stand here?

A. Yes, sir.

Q. And when and where did you first meet him?

A. I think the first time I met him was at my uncle's house one Sunday. My aunt was there.

Q. When?

A. Well, it was either June or July; I suppose it was July of last year.

Q. Of 1935?

A. Of 1935.

Q. And during that period of time were you working at your uncle's barber shop?

A. Yes, sir.

Q. And were you there daily?

A. Yes, sir.

Q. And now, did you see Mr. Hope, at your uncle's barber shop?

[fol. 491] A. Yes, sir.

Q. And did you see him more than once?

A. Yes, sir.

Q. Just state what he was doing when he was there?

A. Well, sometimes he would come in and get barber work and other times he wouldn't. He would come in and talk to my uncle.

Q. Where were he and your uncle when they talked together?

A. They would either sit in the waiting chairs and talk or they would walk outside of the barber shop and around the corner.

Q. Did you see them go outside of the barber shop conversing with each other more than once?

A. Well, I think so, maybe a couple of times.

Q. When was that, with reference to the first time that you saw Hope at your uncle's house?

A. Well, it must have been very soon after that.

Mr. Parsons: Move to strike out "It must have been."
The Court: Motion denied.

A. I don't know just whether it was a week or two weeks, but I know it was very shortly after that, after I had met him up at the house on Sunday, that Sunday.

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[fol. 492] SAM GRANT, called as a witness in behalf of the people, being first duly sworn, testified as follows:

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Direct examination.

By Mr. Williams:

Q. What is your occupation, Mr. Grant?

[fol. 493] A. Barber.

Q. And do you know the defendant, James?

A. Yes, sir.

Q. How long have you known him?

A. I have known him since 1927.

Q. And do you know Charles H. Hope who testified in this case?

A. Yes, sir.

Q. How long have you known him?

A. Since 1928.

Q. During the year 1935, where were you engaged in business?

A. 522 West 8th Street.

Q. Is that the same shop that was owned by the defendant, James?

A. Yes, sir.

Q. How large a shop was that?

A. Well, it is three chairs and a beauty stall.

Q. And did you, during the year 1935, see Mr. Hope at the defendant's place of business?

A. Yes, sir.

Q. How many times did you see him?

A. Well, I couldn't say how many times, but several times. He was a regular customer.

Q. And now, do you remember the occasion of the death of Mary James?

[fol. 494] A. Yes, sir.

Q. With reference to that, when did you see Mr. Hope at the defendant's place of business?

A. Do you mean prior to that time?

Q. Well, did you see him there prior to that time?

A. Yes, sir.

Q. How many times?

A. Several times.

Q. Did you see the defendant and Mr. Hope together?

A. Yes, sir.

Q. What were they doing?

A. They were in the shop and he just came in to get his work.

Q. Did you see them engaged in conversation?

A. Oh, a casual conversation, I would say.

Q. Did you ever see them go out of the shop together engaged in conversation?

A. I seen them stand in front of the shop on one occasion and talk for a little while.

Q. Now, after the death of Mary James did you see Hope there again?

A. Yes, sir.

Q. How often?

A. Well, I wouldn't say for sure, but I would judge about every three weeks, something like that.

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[fol. 495] Cross-examination.

By Mr. Parsons:

Q. Now, you have seen Mr. James stand in front of the shop and talk with other customers too, have you not?

A. Yes, sir.

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[fol. 496] LOUIS BERRY, called as a witness in behalf of the People, being first duly sworn, testified as follows:

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Direct examination.

By Mr. Barnes:

Q. What is your business, Mr. Berry?

A. I am a life insurance agent.

Q. Connected with what concern?

A. Mutual Life Insurance Company of New York.

Q. How long have you been connected with that concern?

A. Three years.

Q. Do you know the defendant, Mr. Robert L. James who sits in the courtroom here?

A. I do.

Q. Did you see him in the year 1935?

A. I did.

Q. Are you familiar with the place where his barber shop was located at 522 West 8th Street in this city?

A. Yes, sir.

Q. How did you become acquainted with Mr. James?

A. By having my work done, my barber work done.

Q. He was your barber?

A. Yes, sir.

Q. Did you ever have any conversation in the year 1935 [fol. 497] with him with respect to the matter of insurance?

A. Yes, sir.

Q. Approximately when was it?

A. Well, during the entire year for that matter I had been soliciting him for life insurance ever since I had been going into his shop.

Q. Calling your attention now to the year 1935 in particular did you have a conversation with him with respect to the subject matter of any prospects that he might have for you?

A. Yes.

Q. About when was that, Mr. Berry?

A. Along in April of 1935.

Q. What was that conversation, the first one that you now refer to?

A. In soliciting him for insurance, he told me that personally he would not be interested, but he would recommend somebody as he had done in the past. He said he knew of some certain girl that would be interested in taking some life insurance.

By Mr. Barnes:

Q. Did you ask who it was at that time?

A. I did.

Q. And what reply did you receive?

[fol. 498] A. Well, he was not prepared to tell me who it was, until the prospect was ready.

Q. Is that what he said?

A. Yes.

Q. When was the next conversation with him about that subject?

A. Approximately two weeks afterward.

Q. At the barber shop again?

A. Yes, sir, always at the barber shop.

Q. What did you say, and what did he say?

A. He wanted to know about how much this would cost for having a \$5,000.00 insurance policy on the 20-year, or 25-year endowment plan, on a girl about 26 years of age.

Q. I call your attention, Mr. Berry, to a document here that you have kindly furnished to us before. Does that document--was that document prepared by you?

A. Yes, sir.

Q. Now, at some time after these events had taken place, during the year 1935, did he make a memorandum and brief sketch of the conditions?

A. Yes, I did.

Q. At the time you made that were certain dates fresh in your memory?

A. Yes, sir.

Q. And would that assist you in fixing the dates and the sequence of events, to use that memorandum?

[fol. 499] A. Yes, sir.

Q. Can you tell us what conversation you next had, after the incident that you have just related with the defendant?

A. I submitted the proposition on a 25-year policy for \$5,000.00 worth of insurance.

Q. And at the time you submitted that, had you been told the name of the party to be insured?

A. No, sir.

Q. You submitted it to the defendant?

A. I submitted it to Mr. James, who promised to submit it to the prospective policy holder.

Q. And that was the substance of that conversation?

A. Yes.

Q. When did you next have a conversation?

A. About a week later.

Q. Where?

A. At the barber shop. I asked Mr. James if he was then prepared to give me the name of the prospect, and he said that he was.

Q. What name did he give you?

A. He didn't give me a name, but he called a young lady from the rear of his barber shop, and introduced her to me.

Q. And who was the young lady?

A. That was Mary E. Busch, later Mrs. Robert James.

Q. Then did the three of you have conversation about insurance?

[fol. 500] A. No. No, he introduced me to her, and I sug-

gested to her that we go away from the shop to talk over the insurance.

Q. Thereafter you and she went away from the shop?

A. Yes, she and I went away from the shop to talk about the matter.

Q. Did you ever take an application for insurance from Mary E. James, nee Busch?

A. I did.

Q. When?

A. On the 7th of May.

Q. I call your attention to a document heretofore shown to counsel, and ask you if you recognize it?

A. Yes, sir.

Q. What is it?

A. This is an application for a \$5,000.00 insurance policy in the Mutual Life Insurance Company of New York.

Q. Now, that is the application that was finally made by Mary Busch for insurance in that concern?

A. Yes, sir.

Q. And what was the day you obtained that?

A. May 7th, 1935.

Q. What kind of policy is applied for in that application?

A. That is \$5,000.00, three year term, followed automatically by life.

Q. Did you have any conversation with the defendant, [fol. 501] James, prior to getting that application from Mary Busch, with respect to any other company's insurance, or the prices of their insurance?

A. Yes. About a week before this application came in, Mr. James told me that the proposition I submitted was higher in price than a certain competitor offered.

Q. Did he mention the competitor?

A. Yes, sir.

Q. What?

A. The Prudential Life Insurance Company is what he termed a half priced policy, meaning that the first three years it would cost less, and a little less later. I sent for them. We called it a preliminary form, and then change it afterwards. He wanted to know what the price of that would be, and I submitted that price, and a week later was when I went ahead with the examination.

Q. And that was the insurance, apparently, that was issued on Mary James?

A. Yes, sir.

Q. Now, after receiving the application from Mary James, what did you do?

A. I took her up to the Doctor's office, and had her examined to see whether she could pass an examination for that insurance.

Q. And you subsequently heard from the examination?

A. Yes. The examination went into New York, and the [fol. 502] company wrote back that they had—they wanted additional information as to the party's history, as to the past history of Mary James, her residence, and so forth, for the last three years.

Q. Thereafter did you have any conversation, prior to the actual delivery of the policy, with Mr. James, about the policy on Mary Busch?

A. When I called for additional information Miss Busch told me, after giving me the information——

Mr. Parsons: Just a minute, now; that is hearsay.

The Court: I think so.

Mr. Barnes: I believe that is hearsay, your Honor.

A. Pardon me.

Q. Mr. James was there, or wasn't there?

A. He said——

Q. Well, you cannot tell us that conversation.

The Court: Was that ever put in the form of an affidavit?

A. Yes, sir.

Q. Did Mr. James ever see it?

A. I don't know.

The Court: Proceed.

By Mr. Barnes:

Q. At any rate, you had a conference with Mary Busch, and then what did you do after the conference?

A. I reported to him——

Q. Don't tell us what you reported.

[fol. 503] A. I reported to my company.

Q. Did you thereafter deliver any policy of insurance to Mary James?

A. On the 25th of June, I delivered a policy such as was applied for, namely, a \$5,000.00, three-year premium term, for \$5,000.00

Q. I call your attention to—by the way—

Mr. Parsons: Mark the application.

Mr. Barnes: May I have the application marked for identification?

The Court: 21 for identification, and the other document which you are about to show the witness, mark that 22.

Mr. Barnes: Thank you.

Q. Showing you People's Exhibit No. 22 for identification, please examine it.

A. Yes, sir.

Q. Is that the policy that was delivered to Mary James?

A. Yes, sir.

Q. Where was the delivery made?

A. At the same barber shop where I had originally met Mary James.

Q. Whereabouts was that?

A. At 582 West 8th Street.

Q. Was Mr. James present at that time?

A. Yes, sir.

Q. Was there any conversation at that time with the [fol. 504] defendant about it, or in his presence?

A. No, sir.

Q. Did you have any further discussion with the defendant about the subject matter of the policy, People's Exhibit 22, that you now hold in your hand?

A. Yes, on the 29th of July.

Q. About what?

A. I received a telephone call at my office from Mr. James. I was not in my office, and the message was left for me to get in touch with him as soon as I came in. It was after this conversation, and before the message—well, the message didn't come, and I was to see him the following morning. When I called him on the following morning, he said to me, "Does it make any difference in a life insurance policy if an applicant states that she is married, and she really is not married?"

[fol. 505] Q. Well, what did you say?

A. Well, I said, "Just what do you mean by that?" "Well," he said, "Mary stated that she was married at the time she applied for your policy. She really was not mar-

ried until the 19th of July. Now, would your company have any objection to that?" So, I said I didn't know, but I would submit the question to the company, and asked Mr. James if he had the marriage certificate and the policy, which I promised to forward to my office for an answer to that question.

Q. What did he say when you asked him if he had the marriage certificate and the policy?

A. He had the marriage certificate in the pocket of his coat, hung up, and he brought it to me with the policy and I gave him a receipt for it.

Q. Is the policy that he gave you at that time this document marked People's 22 for identification?

A. Yes, this is the policy. I took the policy to my office, together with the marriage certificate, and turned it over to our assistant manager.

Q. Thereafter, did you see the policy and the marriage certificate again?

A. On the 5th day of August the policy was returned to me with instructions to deliver to the insured.

Q. And the marriage certificate likewise?

A. The marriage certificate was with it, with a letter.

Q. Now, don't tell us what was in the letter. The letter [fol. 506] was an inter-office communication, I take it?

A. That is right.

Q. In any event, you took the policy and the marriage certificate, and what did you do with them?

A. And I delivered it to the barber shop, Mr. James, to Mr. James personally, because Mrs. James was not there. At that time I inquired about Mrs. James' health and Mr. James informed me that she was getting along nicely.

Q. Had you had any previous conversations with Mr. James with respect to the health of Mrs. James?

Mr. Parsons: Objected to as incompetent, irrelevant and immaterial.

The Court: Overruled.

A. In the three weeks prior to the 5th day of August I made weekly visits to the barber shop to have work done and each time I would inquire how Mrs. James was getting along, and Mr. James invariably told me that she was doing nicely.

Q. When was it, if you can recall approximately, that you

first had a conversation with Mr. James with respect to whether or not Mrs. James was well or ill?

A. It was sometime early in July.

Q. What was said upon that occasion?

A. When I called to the shop I inquired about Mrs. James, who was not present, and was told that she was home, ill.

Mr. Parsons: With whom was this conversation?

[fol. 507] A. With Mr. James.

Mr. Barnes: Did you have any discussion at that time with reference to the subject matter of insurance in some other company?

A. No, sir.

Q. Did you, at any time between that time and the 5th day of August, have any conversation with Mr. James on that subject matter?

A. Just prior to the 5th of August visit, I dropped into the shop to have some work done and I asked Mr. James how Mrs. James was getting along. He said she was getting along nicely, but there was no hurry about her coming home, because she had a health insurance policy and as long as that paid for her time, she was going to get perfectly well before she got back to work.

Mr. Silverman: By "coming home", you mean to the shop, don't you? Instead of "coming home", you meant the shop?

A. Coming to the shop, yes, pardon me.

By Mr. Barnes:

Q. About how long was that before the 5th of August, approximately?

A. Approximately a week.

Q. Did you have any conversation with Mr. James after you learned of the death of Mrs. James about this insurance?

A. About this insurance?

Q. Yes.

A. Yes, I had several conversations with him.

[fol. 508] Q. About when?

A. The first conversation was about between the 15th and 20th of August, I would say, when he first returned to the barber shop. He was absent there for quite a few days after Mrs. James' death.

Q. What was the subject matter of that conversation, what was it about?

A. His question invariably would be whether the company would pay double indemnity as the result of her dying in an accidental manner.

Q. Was anything said to him by you or by you to him with respect to the manner in which she did die?

A. I—

Mr. Clark: That can be answered "yes" or "no", if your Honor please.

The Court: Yes, answer that question "yes" or "no." Will you please read it, Mr. Reporter?

(Question read by the reporter.)

A. Yes.

By Mr. Barnes:

Q. What was it?

.

[fol. 509] A. The question was whether the company would allow double indemnity or twice the amount of the policy on the finding of the Coroner's Jury that it was an accidental death, and I said at the time that I didn't know, that it did depend a great deal on certain findings of the company's investigators.

By Mr. Barnes:

Q. Going back for a moment to the time when this insurance was applied for and drawing your particular attention to Exhibit 21, was anything said by Mr. James or in his presence by you or Mary Busch, with respect to double indemnity?

The Witness: Will you read that, please?

(Question read by the reporter.)

A. No.

Q. How much money was paid on that policy, People's offer 22?

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A. \$59.10, which was the first annual premium of the \$5,000.00 of insurance, plus the double indemnity charge.

[fol. 510] By Mr. Barnes:

Q. There was only one premium paid then on the policy?

A. One premium paid.

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[fol. 511] Cross-examination.

By Mr. Silverman:

Q. You have lived in this city for a number of years, haven't you?

A. 11 years.

Q. You are a married man with a family?

A. Yes, sir.

Q. And you have known Mr. James and you have had your barber work done in his shop for a number of years?

A. Almost from the first week I arrived in this city.

Q. And during that time you were soliciting or were in the business of writing insurance, weren't you?

A. Part of that time.

Q. And during that time did Mr. James give you any prospects for insurance?

A. Yes, sir.

Q. Numerous times?

A. Yes, sir.

Q. And Mr. Berry, you, I believe, stated you were acquainted with Mary James, deceased, the wife of the defendant?

A. Yes, sir.

[fol. 512] Q. When did you first meet her?

A. When he introduced me to her on or about the 7th of May.

Q. That was before anything was said about insurance?

A. Yes, sir.

Q. And you met her before anything—

A. Pardon me just a minute. That was before there was anything said to her about insurance, yes.

Q. Had Mr. James said anything to you about insurance then?

A. Oh, yes.

Q. But you hadn't actually met her and seen her in the place of business there before that time, had you?

A. No, sir.

Q. She had been there, but you hadn't seen her?

A. I may have seen her, but I didn't pay any attention.

Q. Now, this policy, People's 22 for identification was the same kind of a policy that you originally intended to write for her, isn't that right?

A. Yes, sir.

Q. And when Mr. James introduced you to Mrs. James as being the prospective person that wanted insurance, you talked to her about insurance, didn't you?

A. Yes, sir.

Q. Did you talk to Mr. James about it?

A. After that?

[fol. 513] Q. Yes.

A. No, sir.

Q. Then, did you talk to Mrs. James about insurance during her presence, while she was present? At any time while Mrs. James was present did you ever talk to her while Mr. James was present, did you ever talk to her about insurance?

A. After the application?

Q. Yes.

A. Yes.

Q. While he was present?

A. Yes.

Q. What was the subject of the conversation at that time?

A. At one time——

Mr. Barnes: May I inquire, your Honor, if this was while the defendant was present or in the absence of the defendant.

Mr. Silverman: While Mr. James was present.

A. Yes, at one time he was in the shop when she was talking to me.

Q. Was it within his hearing?

A. I think so.

Q. And what was said?

A. Mrs. James wanted to know why the policy had as yet not been issued. That was probably two weeks after the application had been sent in and I told her that I didn't know, that the company had certain rules and regulations [fol. 514] which they followed out before issuing a policy.

Q. And then you received a notice from the company after that, didn't you?

A. Yes, sir.

Q. Asking you for further information?

A. Right.

Q. Which you submitted to them?

A. Yes, sir.

Q. And this \$59.10, you say was the annual premium?

A. Yes, sir.

Q. Who paid that?

A. Mrs. James did.

Q. Now, you said something with reference to the marriage of Mr. and Mrs. James. While you were in the store shortly after the application or prior to the application, shortly before the application was made did you understand, or did Mrs. James tell you that they were married?

A. Prior to the application?

Q. Yes.

A. No, sir.

Q. Before the application was made?

A. No, sir.

Q. How soon after the application was made.

A. Oh, fully two weeks after.

Q. After the application was made?

A. Yes, sir.

[fol. 515] The Court: Just one question, so we won't ramble around.

Q. The application blank contained the statement upon the blank, whether the applicant was married, did it not?

A. Yes.

By Mr. Silverman:

Q. You purchased the wedding ring for Mr. and Mrs. James?

Mr. Barnes: Object to that on the ground it is incompetent, irrelevant and immaterial and not proper cross-examination.

The Court: I don't think it is material. However, if counsel wants to ask just the one question, I will permit it to be answered.

By Mr. Silverman:

Q. Didn't you?

A. Yes, sir.

• • • • •

[fols. 516-517] Q. Previous to that, when you first took the application, her estate was made the beneficiary?

A. Her estate was made the beneficiary.

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[fol. 518] MAX GALATZ, recalled as a witness in behalf of the People, having been previously sworn testified as follows:

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Direct examination.

By Mr. Barnes:

Q. What is your business, Mr. Galatz?

A. Life insurance representative.

Q. And were you so engaged in that business in the year 1935?

A. Yes, sir.

Q. By what company?

A. Occidental Life of Los Angeles.

Q. Do you know the defendant, Robert S. James?

A. I do.

Q. And did you know the deceased, Mary E. Busch?

A. I did.

Q. I call your attention to a document that has been shown to counsel, and ask you if you recognize that? Just have a look at it, Mr. Galatz.

A. Yes, I do.

Mr. Barnes: May we have that document marked 23 for identification?

The Court: It will be marked 23 for identification.

[fol. 519] By Mr. Barnes:

Q. I call your attention now to another document. I will ask you if you recognize that?

A. Yes, I do.

Mr. Barnes: May we have that document marked 24 for identification, your Honor?

Mr. Clark: What is it?

Mr. Barnes: Each is an application, one for \$700.00, and the other for \$5,000.00.

Mr. Clark: May I see those, Mr. Barnes?

Mr. Barnes: Yes. I have shown them to your associate. (Handing documents to Mr. Clark.)

Mr. Clark: This is all that I wanted to see them for at this time, Mr. Barnes. Thank you. I will examine them more carefully later.

By Mr. Barnes:

Q. Tell us when you obtained those two applications, People's offer 23 and 24 for identification?

A. Some time the latter part of May.

Q. Is there a date on the application that would help you refresh your memory?

A. The application is dated June 3rd.

Q. Does that help you remember when it was?

A. Not exactly, Mr. Barnes.

Q. It was about that time somewhere, was it?

A. Yes, approximately 7 to 10 days previous to June 3rd that I took the application on the life of Mary Busch.

Q. Now, did you ever have any conversation with the [fol. 520] defendant, Mr. Robert James, about the subject matter of insurance before—

A. No, I didn't.

Q. (Continuing): —you obtained those two applications?

A. No, sir.

The Court: May I ask the witness one question? Were both of these applications obtained on the same date?

A. Yes, sir.

By Mr. Barnes:

Q. You had had a conversation with Mary Busch before that, but not with the defendant, is that it?

A. No, sir.

Q. You hadn't had any application with Mary Busch before you got them?

A. Application? What was your question, Mr. Barnes?

Q. The question was before you got possession or had those applications signed, did you have any conversation with Mrs. James, at that time Mary Busch, about it?

A. Yes, I did.

Q. When?

A. About four or five days previous to the time of taking the application I met her in a beauty shop, and I had a conversation with her.

Q. All right. Was the defendant there at that time?

A. No, he was not.

Q. Was the defendant there at any time when you had a conversation with her, before you actually got the application?

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[fol. 521] A. No.

By Mr. Barnes:

Q. Now, then, did you have a conversation with Mr. James about insurance, after the time you obtained the application of Mary on the \$700.00 policy?

Mr. Clark: You mean and before the policy was issued?

Mr. Barnes: Yes, before the policy was issued.

A. Will you repeat that, Mr. Barnes?

[fol. 522] Mr. Barnes: Will you read it, Mr. Obrien?

(Question read by the reporter.)

A. Yes, a slight conversation.

Q. What was that?

Mr. Clark: That is objected to upon the ground that it is incompetent, irrelevant and immaterial.

The Court: It will be overruled.

A. After the \$700.00 application was taken and completed, Mr. James asked me if I would insure her for \$5,000.00.

Mr. Barnes: Was there a name mentioned, or did he just say, "Will you insure her?"

Mr. Clark: The same objection, if your Honor please.

The Court: Overruled.

A. I can't definitely say whether he said "Mary James", or "my wife". I am sure he said "her", but I can't say definitely that he used the name, because we were sitting together in a very close huddle.

By Mr. Barnes:

Q. That is you and Mr. James; any one else?

A. Me and Mr. James and Mary Busch, who I thought was Mrs. James at the time.

Q. You were all there together?

A. Yes, at the end of the bench.

Q. What did you say?

A. I said, "You are in good health, and you have a certain amount of insurance on your life", and that there [fol. 523] would be an insurance interest.

Mr. Parsons: I couldn't quite understand that?

A. And that there would be an insurable interest, and I would take an insurance on her life.

By Mr. Barnes:

A. At that time were you informed by any one that Mary James and Robert James were man and wife?

A. No, sir.

Q. Well, in the conversation you had there with Mr. James and Mary Busch, or Mrs. James, was there anything said between them to indicate whether one was the wife or husband of the other?

Mr. Clark: I object—well, I won't object to that.

The Court: You may answer.

A. Nothing was said.

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[fol. 524] By Mr. Barnes:

Q. Now, Mr. Galatz, I show you—take a look here at the writing above the word "settlement" on People's offer 24. I offer this as 24. Who wrote the answers in that application? Whose handwriting is that?

Mr. Clark: One moment. That is objected to on the ground that it calls for incompetent evidence, and an opinion which it has not been shown that the witness is qualified to express.

The Court: Overruled. Was the application made in your presence?

A. I wrote it out, myself.

Mr. Clark: I withdraw the objection, then.

[fol. 525] Mr. Barnes: That is the reason I offered it, because I thought I knew that he wrote it.

Mr. Clark: I see.

By Mr. Barnes:

Q. I call your attention here to Line 15, where it says—

Mr. Clark: Pardon me. May I suggest that it should not be read until it is offered in evidence.

Mr. Barnes: I am not going to. Where it says "Beneficiary", below that, in answer to that, there is pen and ink.

A. Yes.

Q. Is that yours?

A. Yes, sir.

Q. Neither one of those persons are named. Where did you get the information to put in there?

Mr. Clark: That is objected to upon the ground that it is irrelevant and incompetent.

The Court: Overruled.

A. I got the information from Mr. James.

By Mr. Barnes:

Q. That was in the presence, then, of Mr. James?

A. Yes.

Mr. Clark: That is objected to as incompetent, irrelevant and immaterial.

The Court: Overruled. I didn't get the answer?

A. It was.

[fol. 526] By Mr. Barnes:

Q. After looking at that diagram, is your memory refreshed as to whether or not anybody was mentioned as husband or wife of anybody else?

Mr. Clark: That is objected to as irrelevant, incompetent and immaterial.

The Court: Overruled.

A. At the time that I marked "Robert James" as the beneficiary, I asked him if he was the husband, and I asked her if she was his wife, and she said "Yes", and he said "Yes."

[fol. 527] Q. Now then, I noticed here that in this application—I withdraw that. Is there a place in the application where the beneficiary is named?

A. On line 15. The beneficiary?

Q. Yes. Now, at the time that the beneficiary that you wrote on that line and which you have indicated or pointed to under the word "beneficiary", what was said—give us the whole thing that you told Mr. and Mrs. James and not what your company may have said.

Mr. Clark: That is objected to as incompetent, irrelevant and immaterial.

Mr. Barnes: I hadn't quite finished.

Mr. Clark: I beg your pardon.

By Mr. Barnes:

Q. Tell us all the conversation you had there with Mr. James about the subject of his being the beneficiary and the insurable interest of her husband. I didn't get the conversation before. Tell us what you told her husband and Mrs. James at that time.

Mr. Clark: That is objected to on the ground that it is incompetent, irrelevant and immaterial.

The Court: Overruled; you may answer.

A. I told Mr. James, hoping to write him a policy at the time on his life, that there must be insurable interest shown, that he was asking me to write \$5,000.00 for her life so that he could have a larger sum. And so, believing in my own mind—

By Mr. Barnes:

Q. Now, not what was in your own mind. Was anything [fol 528] said there by you to Mr. James as to how much insurance he did have?

A. He told me he had plenty of insurance, had insurance in two or three companies.

Q. Did you ask him how much it amounted to?

Mr. Clark: That is objected to as incompetent, and not proper examination.

The Court: Overruled.

A. He said he had a great deal more than he was seeking for Mrs. James. Then we jumped into the contingent beneficiary, and I stated to Mrs. James it was best to name her as that instead of the first beneficiary.

By Mr. Barnes:

Q. Was there anything said by you concerning the necessity of Mr. James taking some more insurance?

A. Yes, sir.

Q. What was said?

Mr. Parsons: That is objected to as irrelevant.

The Court: Overruled.

A. I said that it would be absolutely necessary for him to have a greater amount of insurance on his life than the amount of insurance that she was writing on her life.

By Mr. Barnes:

Q. Did you tell him how much he would have to take out?

A. \$5,000.00 or more.

Q. What did he say?

A. He said, "Really, you know, I want all the insurance [fol. 529] I can get.

Q. Did you take the insurance of Mary James then?

A. Yes, I took the application on Mary James. He satisfied me.

Q. How did he satisfy you?

A. He satisfied me that the amount of insurance was greater.

Q. Than what?

A. Than the amount applied for on Mrs. James.

Q. How did he satisfy you, by showing you documents?

A. No sir, by telling me two or three different times.

Mr. Parsons: Just a minute; just a minute. We move to strike that out.

The Court: Well, I think that is the same conversation that we already have in the record.

Mr. Barnes: Yes, I was trying to find it out.

Q. Did you have any conversation thereafter—By the way, I withdraw that. At that time then, you didn't take any application on the life of Mr. Robert James?

A. No, sir.

Q. Did you have any conversation thereafter with Mr. Robert James about that subject?

A. Yes, I did.

Q. About how long after?

A. About three days later I had a message at my head office telling me that—

[fol. 530] Mr. Clark: Just one moment, now.

Mr. Barnes: You cannot tell us that.

The Court: No, jump right to the conversation that you had in regard to it.

By Mr. Barnes:

Q. Tell us what that conversation was three days later.

A. I approached his office, his barber shop, because of the understanding that I had he was to buy some insurance. Approaching his barber shop I asked him how much insurance I was to write on his life at this time, knowing that there was a change in mind and heart on his part—

Mr. Parsons: Just a moment, your Honor.

The Court: The last portion of the answer "Knowing there will be a change" and so forth, will be stricken.

By Mr. Barnes:

Q. Let me get at it in this way: After receiving some information at your office, you went directly to his home and asked him how much insurance he wanted?

A. Yes, sir.

Q. And you took his application for insurance?

A. Yes, sir.

Q. How much insurance?

Mr. Clark: I object to that as immaterial.

The Court: Overruled.

A. \$3,000.00.

Mr. Barnes: Could I get those other policies back from you gentlemen?

[fol. 531] Q. Later the policies applied for in the applications heretofore marked 23 and 24 for identification, were issued by the company?

A. They were.

Q. And were they delivered by you?

A. They were.

Q. To you?

A. To Robert S. James.

Q. I call your attention to a policy, which I now hand you. Is that one of the policies that you issued?

A. It is.

Mr. Barnes: We ask that that be marked for identification as People's Exhibit No. 25.

The Court: It will be received as People's 25 for identification.

By Mr. Barnes:

Q. I show you another policy and ask you if that is the other policy which you delivered after receiving those applications?

A. It is.

Q. About when were those policies delivered?

A. Approximately around the 12th or 15th day of June.

Q. Did you have any conversation with the defendant at the time they were delivered?

A. I did.

Q. State what that was.

Mr. Clark: Just one moment; has the date of that delivery [fol. 532] been fixed?

The Court: Yes, he said about the 15th of June.

Mr. Clark: I object to that on the ground that it is incompetent, irrelevant and immaterial.

The Court: Overruled.

A. At the time I delivered the policies he said he would pay for them after eating, and he was eating at the time that I handed them to him.

Q. He was in a restaurant some place?

A. Yes, sir.

Q. Near the barber shop?

A. Yes, sir.

Q. Did you sit down at the table there with him?

A. I did.

Q. And thereafter did he pay for them?

A. Yes, sir.

Q. How much did he pay you altogether?

A. I don't recollect; he paid the difference in the premium on both policies.

Q. And the difference was what?

A. The difference in the girl's premium of what he had made at the bottom of his policy, and her policy and the full premium.

Q. In other words, you got a down payment, and the balance was made at the time, is that correct?

A. Yes, sir.

[fols. 533-534] Q. Can you tell us the total amount paid?

A. No, I cannot. There is only one——

Q. I mean the total amount on the two policies.

A. Yes.

The Court: That appears on the policy, doesn't it?

A. Yes, sir.

By Mr. Barnes:

Q. How many premiums were paid on that policy?

A. One.

Q. Now, with respect to the policy that was issued and delivered by you to the defendant on his own life, how many premiums were paid?

A. Just one.

Mr. Clark: That is objected to as incompetent, irrelevant and immaterial.

The Court: The answer may stand.

By Mr. Barnes:

Q. Did you ever talk about keeping the policy up at a later date?

Mr. Clark: I object to that as incompetent, irrelevant and immaterial.

The Court: Overruled.

A. What was the question?

(Question read by the reporter.)

A. No, I did not.

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[fols. 535-538] By Mr. Barnes:

Q. Mr. Galatz, after the issuance of the \$700.00 policy which you identified here, did you have any conversation with the defendant with respect to the sickness of Mary James, and an application therefor, for compensation under that \$700.00 policy?

A. I did.

Q. About when was the first conversation?

A. About two or three weeks after the delivery of the policy.

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[fol. 539] Q. During the course of your negotiations with these people, did you have any barber work done there?

A. Yes.

Q. You did? Had you ever been back in the beauty shop, in the rear part of the barber shop?

A. Since when, sir?

Q. During the time that you had these negotiations with Mrs. James for insurance on her life?

A. No, I was only in the beauty shop once, and that was when I got acquainted with Mrs. James. Then we talked in the barber shop.

Q. The beauty shop was in the rear of the barber shop, was it not?

A. That is right.

Q. When you were in the rear of his establishment, in the beauty parlor portion thereof, you did discuss the question [fol. 540] of life insurance on her life, did you not?

A. I discussed sick and accident insurance, only.

Q. Did you subsequently write a sick and accident insurance policy on her life?

A. I did.

Q. And when was that?

A. On June 2nd.

Q. June 2nd. And at that same time you also discussed life insurance?

A. No, sir.

Q. You didn't discuss that subject?

A. Not with Mrs. James.

Q. Did you give her any rates?

A. No, sir.

Q. And when was the first time you gave her any rates, or discussed the subject of straight life insurance?

A. I never did give her any rates, or discuss life insurance with Mrs. James?

Q. At no time?

A. Only I discussed it with him in her presence.

Q. Did you ever discuss the subject of life insurance with Mrs. James, regardless of who was present?

A. Yes.

Q. And eventually you wrote a \$5,000.00 policy on her life, is that right? That is, your company, the Occidental, did?

[fol. 541] A. I wrote her a policy, after a conversation with her and Mr. James on the subject of the life insurance.

Q. And at that time you procured from her the information which you put in the application which is attached to the \$5,000.00 policy, did you not?

A. Correct.

Q. And that information contained in the application you procured from Mrs. James, did you not?

A. The one on Mrs. James life I did, yes, sir.

Q. That is the one I am now directing your attention to.

A. Correct.

Q. And I now show you your life insurance policy No. 1122510, upon the life of Mrs. James, and attached thereto is a photostatic copy of your application, is that right?

A. Yes, sir.

Q. And that is the application that you took from Mrs. James, is that correct?

A. Correct.

Q. And the information therein contained you obtained from her, is that correct?

A. I obtained from her directly, yes, sir.

Q. All of the answers to the questions propounded in that application you obtained from her directly, is that right?

A. Yes, sir.

Q. Now, did you know that Mrs. James had made application [fol. 542] for a policy with the Mutual?

A. No, sir.

Q. Didn't you tell Mrs. James that due to the delay in the delivery of her policy, that the Occidental, being a company with its Home Office in Los Angeles, could deliver insurance much more rapidly? Was that subject discussed? There was something said along that line, was there not?

A. No, sir.

Q. There was nothing said about the speed with which your company could execute and deliver a policy?

A. No, sir.

Q. Now, did you say anything to Mrs. James with reference to being able to deliver this policy to her at a lesser rate than some of the other companies?

A. I don't recollect, sir.

Q. Did you intimate, or say that you could save any money for her upon the policy?

A. When this policy was purchased——

Q. No, the question is whether or not you said anything upon that subject?

A. I don't recollect, because Mrs. James didn't buy the policy.

Mr. Parsons: I move to strike that out as not responsive.

The Court: The entire answer?

Mr. Parsons: From the first answer.

The Court: It will be stricken from the word "because" on.

[fol. 543] By Mr. Parsons:

Q. Now, did you ever say to her at any time that you could write the insurance for less money?

A. I don't recollect that I did, sir.

Q. Did you ever say that to Mr. James?

A. I don't recollect that I did, sir.

Q. Did you ever tell Mr. James that due to the fact that the Occidental was a local, California company, with an office in Los Angeles, that you could deliver the policy much more rapidly than an eastern concern?

A. I am quite sure I did not.

Q. Would you say that you didn't say that?

A. I would say that I didn't.

Q. Did you know that there was some delay, or that it was taking a little longer, perhaps some time, than the delivery of this other policy?

A. I did not.

Q. You didn't know about that?

A. No.

Q. When this insurance was first discussed, did Mrs. James, in the barber shop, walk over to the cash drawer and obtain \$5.00 and pay you? Do you recall such an incident?

A. Are you referring to the issuance of the application?

Q. I will put it this way: At any of the time when you had a conversation with Mrs. James, referring to the subject of insurance, did she hand you any money?

A. I don't recollect if Mrs. James paid the first monthly [fol. 544] premium on the sick and accident policy, or if Mr. James paid.

Q. What is the monthly premium?

A. \$3.80, sick and accident policy.

Q. Can you recall that she went over to the cash register? Do you recall any such incident, obtaining some money?

A. I can't recollect if it was Mr. James or Mrs. James that paid that first monthly premium.

Q. But either one or the other, in the barber shop, handed you the cash, is that right?

A. Yes, I can recollect now Mr. James paid it out of the cash register.

Q. Mr. James?

A. Correct.

Q. And she walked up to him and asked him for the money, didn't she, and obtained a \$5.00 bill, isn't that right? He took the money out of the register—and handed it to her, and she passed it to you, isn't that the way it happened?

A. I can't remember definitely. I remember that he took the money out. We were back there, and the cash register is in front.

Q. Didn't she walk up to the front, and walk up to Mr. James, and ask for some money, and didn't he hand it to her, and she handed it to you?

A. I can't remember that, exactly.

Q. But you can't remember exactly how the conversation [fol. 545-550] took place?

A. I wouldn't say that Mr. James gave it to her, and that she gave it to me, because I remember that he went into the register and obtained some money.

Q. Who communicated to Mr. James the fact that some money was needed to pay you?

A. I did.

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[fol. 551] GENE WADDLE, called as a witness in behalf of the People, being first duly sworn, testified as follows:

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Direct examination.

By Mr. Barnes:

Q. Mr. Waddle, you are connected with the Occidental Life Insurance Company?

A. I am.

Q. And in 1935 you knew Mr. Galatz?

A. I did, sir.

Q. In what capacity were you connected at the time of 1935 between, we will say April and August?

A. Unit manager, home office agency.

Q. And as such unit manager was Mr. Galatz working as one of those insurance agents under your unit?

A. That is right.

Q. And do you know the defendant, Robert S. James?

A. I do.

Q. Did you see Mr. James at any time in the year 1935?

A. On one occasion.

Q. What was the occasion of your going to see him that time?

Mr. Clark: Just one moment. That is objected to upon the ground that it is incompetent, irrelevant and immaterial [fol. 552] and it assumes facts not in evidence.

The Court: Sustained on the last ground.

By Mr. Barnes:

Q. Did you go to see Mr. James at his place of business?

A. I did.

Q. What was your occasion for you going to see him at that time?

Mr. Clark: That is objected to upon the ground that it is incompetent, irrelevant and immaterial.

The Court: Overruled.

A. As a result of a phone call from him.

By Mr. Barnes:

Q. Where did you see him?

A. Do you mean where did I talk with him or where did I first see him?

Q. Where did you first see him?

A. At the entrance to his barber shop.

Q. As you walked in did you have anything in your hands or under your arms?

Mr. Clark: That is objected to upon the ground that it is immaterial.

The Court: Overruled.

A. Yes, my case.

By Mr. Barnes:

Q. Was there any name on it?

A. No.

Q. When you walked in did he say something to you?

A. He greeted me at the door and asked me if I was Mr. [fol. 553] Waddle.

Mr. Clark: Just a minute. Just answer that directly "yes" or "no", so that I can object to it.

Mr. Barnes: Do I understand that there is an objection pending now?

Mr. Clark: No, I am getting read- to. I am like a rattlesnake; I am just rattling now.

The Court: We are waiting for the next question.

By Mr. Barnes:

Q. What did you say to him then?

Mr. Clark: That is objected to on the ground that it is incompetent.

The Court: Overruled.

A. I answered affirmatively.

By Mr. Barnes:

Q. What did he say to you?

Mr. Clark: That is objected to on the ground that it is incompetent and irrelevant and immaterial.

The Court: Overruled.

Mr. Barnes: In other words, give us that conversation. What did he say and what did you say?

Mr. Clark: Objected to as immaterial.

The Court: The same ruling. Give the conversation as near as you can and the words that you used.

A. The substance of it was that he would like to talk with me and would I walk up the street with him, which I did.

By Mr. Barnes:

Q. Where did you go?

A. About four doors west on the north side of 8th Street [fol. 554] and then followed him into the rear end of a liquor store in which there was a lavatory and I followed him into the lavatory.

Q. Was there anyone else there?

A. No, sir.

Q. What kind of a conversation there ensued?

Mr. Clark: Objected to as incompetent, irrelevant and immaterial and entirely outside of the issues of this case.

The Court: Overruled; you may answer.

A. He stated—as he asked me I was conscious of the fact that he had insurance with us that he had Mrs. James' insurance with us and I answered affirmatively, and he stated that he was anxious to learn, that his attorney had asked him to determine what the status of the insurance policy on her life would be in the event of her death, when applied for out of wedlock as man and wife.

By Mr. Barnes:

Q. And what did you tell him?

A. I merely stated——

Mr. Clark: Just a moment—well, I have no further objections.

By Mr. Barnes:

Q. What did you tell him?

A. I stated that I was selling in the home office agency and my position was such that I could not give an accurate answer to such a question, but that he should submit that fact in writing, to make that clearly payable to her.

The Court: Give your reason.

[fol. 555] A. He pointed out that in this particular instance they had contemplated being married, but at the time they were not married. They had planned for it before their marriage but she had been called to Long Beach on some special dental work and had been detained there, which resulted in the wedding being held up and that they had subsequently been married, and wanted to know the status of the insurance with those facts. I told him that I had no authority to give him an absolute authority on it, because the contract was a contract and should be submitted to the company.

By Mr. Barnes:

Q. The contract was a contract that should be submitted in writing to the company?

A. Yes, sir.

Q. When did you have that conversation?

A. I cannot give you the exact date.

Mr. Clark: If you think that is a matter of a certain time I wish you would fix it definitely.

Mr. Barnes: I was going to do it. Do you recall hearing of the death of Mrs. James?

A. Naturally.

Q. Whatever time that was, how long before that was it that you had this conversation, approximately?

A. Approximately two or three weeks.

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[fol. 556] ARTHUR J. HUGHES, called as a witness in behalf of the People, being first duly sworn, testified as follows:

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Direct examination.

By Mr. Barnes:

Q. You are an Official Shorthand Reporter of the Superior Court?

A. I am.

Q. And in such capacity did you make shorthand notes of certain testimony given in the case of Occidental Life Insurance Company v. Robert James, No. 392270, a copy of which I have in my hand?

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[fols. 557-558] A. Yes, I identify this transcript.

By Mr. Barnes:

Q. And at the time you made that transcription, was the transcription made from shorthand notes of your own?

A. It was.

Mr. Clark: That is objected to—I wanted to have this objection observed throughout.

By Mr. Barnes:

Q. And were the shorthand notes written at the time when the matters were fresh in your memory?

A. They were.

Q. And after having transcribed your shorthand notes, were you able to say that they truly state the statements made by the witness in that trial?

A. They do.

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[fol. 559] Mr. Williams: If your Honor please, during the recess Mr. Silverman and I took up with your Honor the matter of the disposition of these rattlesnakes and it was suggested at that time that it would be agreeable to the defendant and to counsel both to the people and the Court and particularly for Mr. Moore, that the rattlesnakes be taken by Mr. Houtenbrink to his snake farm and put there, subject to being called for if counsel should need them.

[fol. 560] Mr. Clark: That is not agreeable to us.

The Court: Well, that was the proposition of Mr. Silverman and we assumed that it would be acceptable to the defense.

Mr. Clark: Well, Mr. Silverman may not have the information, but we expect to have a man upon whom expert knowledge we have some reliance. I think that he will be present tomorrow.

Mr. Parsons: I think either tomorrow, or day after tomorrow.

Mr. Clark: I don't want to put Mr. Moore to any inconvenience.

The Clerk: I don't know what we are going to do with them.

Mr. Clark: We haven't had any opportunity to confer about this. Suppose we do confer about this.

The Court: You may do so.

(Discussion between counsel)

Mr. Clark: That is the only thing that we have in mind that it is going to be difficult to our men to possibly go

out there. If we could have the snakes returned here at a certain time wouldn't that meet the situation, gentlemen?

(Discussion not for the record.)

Mr. Clark: Well, supposing we arrange to have them taken down to the ranch and to make arrangements to bring them here when needed.

ORDER FOR RETURN OF SNAKES

The Court: Yes, let the record show the stipulation. Let the record also show at this time that the Court orders the return of this exhibit consisting of the rattlesnakes, People's Exhibit 20, from Mr. Houtenbrink and Mr. Houtenbrink is made the agent of the snakes by the further order of the Court and they are not to be disposed of or to be shipped away by Mr. Houtenbrink. Mr. Houtenbrink, will you do that?

Mr. Houtenbrink: Yes, your Honor.

The Court: Well, we will make you the Clerk of the court.

Mr. Clark: To be kept in the same condition as they are now?

The Court: Yes, to be kept in the same box. In other words, keep them exactly in the same situation as they are now as far as possible.

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[fol. 563] Mr. Barnes: Now, pursuant to our agreement yesterday, I take it that it will be stipulated that if Mr. Hughes were here, he would testify that what I am about to read from this transcript, was what was said by the defendant in that proceeding. Is that the understanding?

Mr. Clark: It was stipulated yesterday evening, if the Court please, and the stipulation will be received by us now, namely that subject to the objections which we are to make, Mr. Hughes, as he was present upon the stand, could and would have used the transcript which counsel holds in his hand, and if our objection was overruled, would testify in the exact language of the portions of transcript which counsel desires to read.

[fol. 564] And therefore, subject to the objections that we are about to make, it is stipulated that if the Court deems the matter embodied in the transcript to be relevant

and competent here, that counsel may read it as they stipulated it to be considered in all the features of the testimony of Mr. Hughes, with the same effect as though stated by Mr. Hughes, here on the stand.

However, counsel has submitted to us the matter which he wishes to read and we now object and would object if Mr. Hughes were on the stand testifying and we object, I say, to the substance of the matter as being irrelevant to the issues here, incompetent to establish any of the facts, lacking in foundation in that it is an attempt to prove the declarations or admissions of the defendant without having first established the corpus delicti by other proof and that the greater part of it, at least, is immaterial. I will add immateriality to the other objections. The objections then are that it is irrelevant and outside the issues, that it is incompetent to establish the corpus delicti, and the corpus delicti not having been established, it is incompetent for other purposes, that no foundation has been laid for its introduction in that the corpus delicti has not been otherwise proved, and that it is immaterial. It may be prejudicial and cannot assist the jury in reaching their determination.

The Court: The objection will be overruled.

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[fol. 565] Mr. Barnes: Yes, beginning at page 138: "Direct examination. Robert S. James, having been previously duly sworn, testified as follows: Direct examination, by Mr. [fol. 566] Silverman: Q.—What is your name? A.—Robert S. James. Q.—You are the defendant and cross-complainant in this action? A.—Correct. Q.—What is your occupation? A.—Barber. Q.—Where is your place of business? A.—522 West Eighth Street. Q.—City of Los Angeles? A.—Yes. Q.—How long have you been in business? A.—I have been in business here ten years; at that particular location about two years. Q.—You are the husband of the deceased, Mary E. James? A.—Yes. Q.—When did you first see her?"

Mr. Clark: To which we object on the ground that it is immaterial and is irrelevant and make those general grounds stated in the objection before.

The Court: Overruled.

Mr. Barnes: (Reading.) "I met her about the 1st of

March of this year. Q.—What relation was she to you during her lifetime?"

Mr. Clark: And that is objected to also, upon the grounds last stated.

The Court: Overruled.

Mr. Barnes: The next question is not answered directly. Going to page 139 of the transcript, Mr. Persons—

The Court: I have asked Mr. Barnes to indicate the reading of the pages.

Mr. Barnes: "Mr. Silverman: Yes. When were you married to Mary E. James? A.—Well, I was married in Santa Ana on July 19th. Q.—Before that marriage did you live with her as husband and wife?"

[fol. 567] Mr. Clark: Now, just a moment; that is objected to on the ground that it is wholly irrelevant here and of a character of material cited to prejudice the defendant.

The Court: Objection overruled.

Mr. Barnes: "A.—Yes. Q.—When did you start living with her as husband and wife?"

Mr. Clark: The same objection stated to the last question.

The Court: Objection overruled.

Mr. Barnes: "A.—I started living with her on May the 9th.

By Mr. Silverman: Q.—What year? A.—1935. Q.—Where?"

Mr. Clark: The same objection last stated.

The Court: The same ruling.

Mr. Barnes: "A.—At my home. Q.—Where was your home?"

Mr. Clark: The same objection.

The Court: The same ruling.

Mr. Barnes: "A.—843 West fifty-ninth street. Q.—In the City and County of Los Angeles, State of California? A.—Yes. Q.—And did you have any marriage ceremony at that time?"

Mr. Clark: That is objected to on the grounds last mentioned.

The Court: Objection overruled.

Mr. Barnes: "A.—Yes. Q.—What took place?"

Mr. Clark: The same objection.

The Court: The same ruling.

Mr. Barnes: "A.—Well, I don't know how to answer it; we were just married. Q.—Who married you?"

Mr. Clark: That is objected to upon the grounds that it [fol. 568] is immaterial and irrelevant.

The Court: Overruled.

Mr. Barnes: "A.—A man by the name of Riegel. Q.—And when did that take place?"

Mr. Clark: The same objection.

The Court: The same ruling.

Mr. Barnes: "It took place the night of May the 9th, I believe. Q.—Did you know whether or not that was a real marriage?"

Mr. Clark: The same objection.

The Court: The same ruling.

Mr. Barnes: "Q.—I knew it was not. Q.—Did you cause that ceremony to be performed?"

Mr. Clark: The same objection.

The Court: The same ruling.

Mr. Barnes: "A.—Yes."

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[fol. 569] Mr. Barnes: "Q.—Can you state the circumstances that led to this marriage?"

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Mr. Barnes: "A.—Can I state the circumstances? Q.—What caused you to have the marriage, the circumstances leading up to the marriage?"

Mr. Clark: The same objection that was last made.

The Court: Objection overruled.

Mr. Barnes: "A.—Well, we had been going together and we were very much in love with each other and we wanted to live together and I knew at the time I could not marry her because I was already married."

Mr. Clark: Now, I move to strike the evidence out, and ask that the jury be instructed to disregard it, not only it being prejudicial to the defendant in the defense of the

offense for which he is on trial, but it would not tend to establish any proof in this case.

The Court: Objection overruled.

Mr. Clark: And the motion denied?

The Court: Yes, the motion is denied.

Mr. Barnes: "Q.—Was there any proceeding pending at [fol. 570] that time with regard to that other marriage?"

Mr. Clark: That is objected to as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Barnes: "A.—Yes, I had an annulment pending."

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Mr. Barnes: "Q.—All right, proceed."

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[fol. 571] Mr. Barnes: "A.—Well, I promised to marry her and we wanted to live together."

Mr. Barnes: Apparently continuing the answer, Line 23, "I decided that I would have to figure it out some way to satisfy her to live with me. That was what I decided on."

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Mr. Barnes: "Q.—That was what you did?"

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Mr. Barnes: "A.—That I would get this man to marry us. She would not know the difference until I got my annulment, then I would tell her."

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[fol. 572] Mr. Barnes: "A.—We lived together from then on. Q.—You didn't live together before that time? A.—No. Q.—And where did you live together after that time?"

Mr. Clark: That is objected to on the ground that it is incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Barnes: "A.—Well, we were married, I think, on the 9th and lived there at the house. Q.—The 9th of May? A.—The 9th of May. Q.—1935? A.—This year. Q.—Then what happened?"

Mr. Clark: That is objected to on the grounds previously stated.

The Court: Overruled.

Mr. Barnes: A.—On the 12th we moved into our home on Verdugo Road, 1329 La Canada; and we lived there from then on. Q.—Until she passed away? A.—Yes. Q.—Handing you Plaintiff's Exhibit 1, I will ask you if you have ever seen that before. That is the application for the policy."

Mr. Clark: We will make the general objection interposed before to this specific question.

The Court: Overruled.

Mr. Barnes: "The Court: That is the application for the \$5,000.00 policy? Mr. Silverman: Yes, No. 1122510. A.—Yes. Q.—Now I hand you Plaintiff's Exhibit 2, which is the application for the \$700 policy, No. 666680, and ask you if [fol. 573] you have ever seen that before? A.—Yes. Q.—When did you first see this Exhibit No. 1, where and when? A.—At the barber shop. Q.—When was that? A.—I think it was the 3rd of June. Q.—When did you see Plaintiff's Exhibit 2 and where? A.—I think that was the same time. Q.—Were you present when these Plaintiff's Exhibits 1 and 2 were filled out and executed? A.—Yes. Q.—Was there any conversation between the agent of the plaintiff company and the applicant, the deceased, Mary E. James, prior to the time that these two exhibits were executed? A.—Yes."

I neglected to state, Mr. Person, that we went over to Page 143, where the policy No. 666680 appears.

Mr. Clark: Where the first word "Application" appears.

Mr. Barnes: Yes. Now, going to Page 144—143 is the question preceding that—the question doesn't appear; apparently the answer continues—"A.—Yes, there was a conversation there. I was cutting the agent's hair. Q.—What agent's hair, the agent that took these applications? A.—Galatz, I believe it was; and my wife was wanting a health and accident insurance policy; and I spoke to him about it, and she had told——"

Mr. Clark: Thereupon, an objection was interposed and sustained.

Mr. Barnes: That is correct. "Q.—What did the agent say, Mr. Galatz? A.—Well, he told her he had a health and accident policy——"

[fols. 574-611] Mr. Clark: Just one moment. I object to the conversation—I don't believe I will object to that. The objection is withdrawn.

Mr. Barnes: "A.—Well, he told her he had a health and accident policy that would pay her from the first week, and she decided to let him write it, and she told him he had just missed writing her a life insurance policy because she had taken one out with the Mutual—" The answer continuing: "She told him that the Mutual had written her a policy but it had been some time and that the agent had told her to forget about it, that he would not be able to get the policy for her."

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[fol. 612] J. D. ROGERS, called as a witness in behalf of the People, being first duly sworn, testified as follows:

The clerk: State your name, please.

A. J. D. Rogers.

Direct examination.

By Mr. Barnes:

Q. Mr. Rogers, where do you live?

A. 317 North 16th Street, Colorado Springs.

Q. In the State of Colorado?

A. In the State of Colorado.

Q. How long have you lived in Colorado Springs?

A. 20 Years.

Q. Were you living there in the year 1932 and 1933?

A. Yes, Sir.

[fol. 613] Q. In the year 1932 what was your occupation?

Mr. Clark: Just one moment. The question is objected to on the ground that it is irrelevant, and outside of the issues of this case.

The Court: I can see no particular harm in permitting it as a preliminary question. Answer. What was your occupation in 1932?

A. I was superintendent of the Pike's Peak Auto Highway.

By Mr. Barnes:

Q. What was the nature of that highway at that time?

Mr. Clark: That is objected to upon the ground that it is irrelevant.

The Court: Same ruling.

Mr. Barnes: You may answer.

A. The road was in good shape for traffic.

Q. Was that a State Highway, or privately owned?

Mr. Clark: That is objected to upon the ground that it is irrelevant.

The Court: Overruled.

A. Privately owned.

By Mr. Barnes:

Q. Were you employed by the company owning that road?

A. Yes.

Mr. Clark: That is objected to upon the ground that it is irrelevant and immaterial.

The Court: The answer may stand.

[fol. 614] By Mr. Barnes:

Q. Where were you stationed in the month of September?

Mr. Clark: That is objected to upon the ground that it is irrelevant.

The Court: Overruled. You may answer.

A. Glenn Cove.

By Mr. Barnes:

Q. Tell us where Glenn Cove is with respect to the road?

Mr. Clark: That is objected to upon the ground that it is incompetent, irrelevant and immaterial.

A. It is 11 miles up the road.

By Mr. Barnes:

Q. From what point, sir?

A. From the highway at Cascade, known as Cascade.

Q. That road up Pike's Peak begins at Cascade?

A. Yes.

Mr. Clark: That is objected to upon the ground that it is irrelevant and immaterial.

The Court: Overruled; you may answer.

Mr. Barnes: How far, then, is it from Glenn Cove to the top of Pike's Peak?

A. Seven miles.

Mr. Clark: That is objected to on the ground that it is immaterial.

The Court: The answer may stand. The objection is overruled. Let the record show that the objection is made before the answer, and the ruling before the answer.

[fol. 615] By Mr. Barnes:

Q. Was there any system in force at that time with respect to checking cars that went up and down Pike's Peak Highway from Cascade and back?

Mr. Clark: That is objected to on the ground it is incompetent, irrelevant and immaterial.

The Court: Overruled; you may answer.

A. Yes, the cars were checked at the toll gate, and at Glenn Cove both, checked both ways.

Mr. Clark: I now move to strike the answer out upon the grounds stated in the objection, and upon the further ground that the testimony is incompetent.

The Court: Overruled; motion to strike denied.

Mr. Barnes: What was the system prevailing at that time with respect to the manner in which sight-seers would obtain passage to go up the road from Cascade to the top of the mountain and back again, such as the issuance of tickets, and so forth?

Mr. Clark: That is objected to upon the ground that the system is incompetent for the purpose of proving what occurred in any particular instance, and is likewise incompetent for proving any facts in this case, and that the evidence is irrelevant.

The Court: I am inclined to think the first part of the objection is well taken. Sustained on that ground.

Mr. Barnes: It is only preliminary, your Honor.

The Court: It may be, but I don't think you can prove [fol. 616] what took place on a particular occasion by proving what was the custom.

Mr. Barnes: We are not trying to prove what took place on a particular occasion; it is merely to make plain to the

jury testimony that will follow in respect to a certain checking that took place on that occasion.

The Court: Objection sustained.

By Mr. Barnes:

Q. State whether or not tickets were issued to sight-seers during that period of time, which were collected at various portions of the trip?

Mr. Clark: That is objected to upon all the grounds I have stated.

The Court: Sustained.

Mr. Barnes: Did you see this defendant at any time in the month of September, particularly about the 21st of September, 1932?

Mr. Clark: That is objected to upon the ground that it is irrelevant.

The Court: Objection overruled.

Mr. Barnes: You may answer that "yes" or "no".

The Court: Whenever I overrule the objection you may answer the question, Mr. Rogers.

A. Yes, I seen him the day of the accident.

Mr. Clark: I move to strike out the statement, "the day of the accident", as not responsive to any question, and incompetent.

[fol. 617] The Court: Stricken out.

By Mr. Barnes:

Q. Was there an accident on or about the 21st day of September, 1932?

Mr. Clark: That is objected to upon the ground that there has been no foundation, in that it is not shown that this witness has any personal knowledge, and that the evidence is incompetent and irrelevant.

The Court: You may answer.

A. What was the question?

Mr. Barnes: Read it, Mr. Reporter, please.

(Question read by the reporter.)

A. Yes, sir.

Q. Did you go to the scene of the accident?

Mr. Clark: That is objected to upon the ground that it is irrelevant and immaterial, whether he did or did not.

The Court: Overruled. You may answer.

A. Yes.

By Mr. Barnes:

Q. Prior to going to the scene of the accident did you see this defendant?

Mr. Clark: That is objected to upon the ground that it is irrelevant and immaterial.

The Court: Overruled; you may answer.

A. Yes.

By Mr. Barnes:

Q. Where did you see him?

[fols. 618-619] Mr. Clark: The same objection.

The Court: The same ruling.

A. I saw him at Glenn Cove.

By Mr. Barnes:

Q. When you say him, what did he say to you?

Mr. Clark: Just one moment; that is objected to upon the ground that the evidence is remote and obviously has no bearing on the issues of this case and that it is irrelevant, and further that it is incompetent to show any statements or declarations made at that time and place.

The Court: It doesn't appear to me that it effects the present state of the record.

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COLLOQUY

[fol. 620] Mr. Barnes: With respect to this offer of proof, we offer to prove by this and other witnesses to be called who are now present in court, that on or about the 31st day of September, 1932, the defendant was going up Pike's Peak with a former wife known as Winona, and also known as Nona P. James. Her name prior to that time had been known as Nona P. Wallace. They were apparently sight

seeing and they had gone up Pike's Peak from the bottom, and that the road leading up there was privately owned and [fol. 621] that tickets were purchased. That the road passed different points and the tickets were delivered and that all automobiles had left Pike's Peak on the occasion on which the defendant and his party went, on this day. And that they were the last ones down and that on the way down the automobile in which the defendant and his wife were riding went over the side of the road. There was what appeared to be an accident. That the defendant went to Glenn Cove—I am not going to give the detail of it, but just the general picture was that it was a good distance in general, and went to the place where the accident had occurred, and found Mrs. James unconscious beside the car, and she was taken to a hospital, and further that the circumstances surrounding this accident or this incident, which appeared on its face to be an accident, was found to be a deliberate plan on the part of the defendant to cause this thing to appear—

Mr. Clark: May I ask how the Court can rule on that with no more indication than counsel has given?

Mr. Barnes: Well, I think probably the Court can fully understand what our object is, and it is the object of this evidence that is now under consideration by your Honor—

Mr. Clark: It does seem to me that an offer of proof should be specific as to every circumstance that they intend to prove, so that the defense will know definitely what it is going to be confronted with, and affirmatively state its position at this time so that the Court may make a ruling as [fol. 622] to what the law is.

Mr. Barnes: I feel we are making our position clearly.

Mr. Clark: Pardon the interruption.

Mr. Barnes: It will take quite a long time to relate them, but the sum total was really susceptible of the construction that this defendant ran this car over the bank, and in the course of doing that, hit her over the head with probably some blunt instrument. And after she was in that condition sent her in the automobile over the bank. Thereafter assistance was received from Glenn Cove, and an ambulance called and she was taken to the hospital. She was operated upon; that while she was in the hospital his actions in some respects were not those of a man who was worried about a woman that he dearly loved; that instead of dying in the hospital, she got well and was released therefrom; that

just prior to her release from the hospital the defendant obtained a cottage in a secluded spot and within six days after she was released from the hospital the defendant came home, very conveniently with a grocery boy, and strangely enough found that wife drowned in the bathtub; that prior to these incidents the defendant had obtained \$12,000.00 worth of life insurance on her, or caused \$13,000.00 worth of life insurance to be issued upon her life; that she had prior thereto \$1,000.00 with a certain life insurance company and had had for a number of years and that after the defendant's marriage to her, he became the beneficiary of that policy; that one of these policies was [fol. 623] a double indemnity policy and that as a result of these incidents which we contend were done with the design of the defendant and are reasonably susceptible to that construction, this defendant collected in cash \$14,000.00 as the result of the death of his former wife, Winona P. James.

Mr. Clark: If you Honor please—

The Court: Just a minute, Mr. Clark.

Mr. Barnes: The facts further are reasonably susceptible of the construction that her drowning in the bathtub was not an accident, but was done by the design of the defendant.

That in brief, is the testimony upon which we are about to embark in this examination.

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Mr. Clark: In order that the discussion may proceed, may I make it clear to your Honor, with the offer of proof before us, that we have two lines of objection? One is to [fol. 624] the vague character of the offer of proof, itself, being so vague and indefinite, as to render it impossible for the Court to know at this time what he is called upon to rule about. The other objection is that disregarding any ambiguity in the offer of proof, the evidence offered amounts, in its substance, to an offer to prove that this defendant is suspected by somebody of having committed another crime at another occasion, under other circumstances, for the purpose of obtaining insurance money, or if we disregard counsel's statement that the circumstances are reasonably susceptible of an interpretation showing the guilt of the defendant, which, I believe, is far from showing

it beyond a reasonable doubt, which is necessary in criminal cases, I say if we waive that, and regard it as an offer to prove the commission of another offense, it comes within the well-established rule laid down by the Supreme Court in such cases as *People vs. Lane*, in 100 California, and *People vs. Glass*, in 158 California, and is irrelevant and incompetent, it being an attempt to prove the commission of this crime through the probability that another crime of a like general character has been committed by the defendant.

Now, I worked until a late hour Saturday evening, and made a memorandum of many authorities, which in the haste of the trial has become temporarily mislaid, including some very significant authorities from other jurisdictions. [fols. 625-665] We needn't hesitate about proceeding with the argument, however, by reason of the situation. There is an abundance, I think, of California authorities, bearing upon the point, to furnish your Honor all proper guidance, and I shall be very glad to hear from counsel what law they think they have that sustains their position.

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[fol. 666] Mr. Clark: If we make that assumption, then we are called upon to consider whether or not, assuming that the corpus delicti in this case has been established, a view that I assume that your Honor has been indulging, but one as to which I have sufficient doubt that I have tried to protect my record on it, and assuming that the corpus delicti has been proved, still it is our contention that evidence of another offense is not admissible unless there is some logical connection between it and the offense charged here. The question is a most serious one. Years of time have intervened without any charge having been made. If the evidence exists by means of which the commission of such crime can be proved with the certainty which the law requires, under the doctrine of this *Lane* case, it is impossible for me to understand why this defendant is not being prosecuted for murder in Colorado instead of here. If he were being prosecuted for murder in Colorado he would have the processes of the Courts there.

Mr. Barnes: We can't do that. It isn't quite in our jurisdiction.

Mr. Clark: He would have the process of the Court by which to produce witnesses resident in that state who could

[fols. 667-684] give testimony throwing light on the fact which might prove his innocence, but if that case is to be tried here, the people may import such witnesses as they see fit to import and the defendant has no opportunity to rebut the testimony of witnesses which they have brought from abroad.

Therefore, I say, following the Lane case, that the general rule is to be rigidly adhered to, and the evidence is not to be received unless it is clearly and unquestionably brought within one of the clear exceptions to that general rule. The only one of the clear exceptions which counsel, with any degree of force have even tried to argue is that of a common plan or system.

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[fol. 685] Mr. Clark: If we exclude the testimony of Hope, every circumstance outside of the insurance evidence, whatever probative value it has, every other circumstance that has been proved in this case, to my mind bearing upon the subject at all, logically tends to show an accidental drowning of Mary James, rather than a homicide. She [fol. 686] was not killed by any rattlesnake bite. She met her death by drowning. That is the testimony of Dr. Wagner, who found water in her lungs, and that water in her lungs meant that she was alive when submerged in the water. The lungs were then contracting and expanding. That is Dr. Wagner's testimony. The testimony of Hope is that there was a conspiracy to kill her by means of rattlesnake bite, a conspiracy which his evidence leaves uncompleted. According to his testimony such attempts as were made in that direction were futile, and he professes to have no direct personal knowledge of precisely where or how she met her death. The body is found in a pond with a wound upon it which might have then caused her to have fainted and fallen in the pond, and there is some evidence, I think, before the Court already that at that time she was not well, and was under the care of a physician.

The defendant invited two guests to have dinner with him, made purchase of the supplies for the dinner on the way home, and according to all of the witnesses who saw him, manifested genuine evidence of grief upon ascertaining the fact of her death. Other circumstances I might refer to having the same general tendency to show that her death

was accidental, rather than homicidal, I will not bother the Court with now.

Now, having placed those circumstances in the case, counsel comes in and says, "We want to disprove those [fols. 687-692] circumstances, and corroborate the testimony of the man who admits being at least one of the principals in this case, if not the only one. We want to rebut those circumstances, and corroborate the accomplice by showing that this death was not accidental, because Mr. James had another wife who died under circumstances which we contend would support the possible inference that he had murdered her, or the probable inference that he had murdered her." I don't think that can be done. I submit the matter.

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[fol. 693] The general tests of the admissibility of evidence in a criminal case are: 1. Is it a part of the *res gestae*? 2. If not, does it tend logically, naturally, and by reasonable inference, to establish any fact material for the people, or to overcome any material matter sought to be proved by the defense? If it does, then it is admissible, whether it embraces the commission of another crime or [fol. 694] does not, whether the other crime be similar in kind or not, whether it be part of a single design, or not. The commonest instance of the admission of evidence of another crime is where it becomes pertinent to prove the scienter or guilty knowledge under the particular charge. Thus, where a man is charged with passing counterfeit coin, it is allowable in order to prove his knowledge that the coin was counterfeit to show that upon other occasions, with knowledge of the false character of the money, he has passed similar coins. In *People vs. Cunningham*, 66 Cal. 668, in the prosecution of the defendant for the larceny of cattle, to rebut the presumption that the defendant came innocently into the possession of the cattle, it was permitted to be shown that a steer belonging to a third person, which was found in the defendant's possession with the cattle of the complaining witness, was stolen. In *People v. Lane*, 101 Cal. 514, where the charge was murder, the defense pleaded insanity, claiming that the deflowering of the defendant's daughter by deceased had upset his reason. The people in rebuttal were permitted to show that the defendant had

committed incest with that very daughter, as combating the view that deceased's acts could have deranged defendant's mind."

The Court: I don't think there is any occasion for any formal expression of opinion, except the ruling. I believe the evidence is admissible. One thing, however, should be [fol. 695] mentioned. I am still very much impressed with the case of *People vs. George Joseph Smith*. In fact, as I look down I see Mr. Morrissey White, who very kindly submitted to me a complete record of the case, he having at one time been connected with the defense of that case, but wisely withdrew.

I believe the evidence is admissible. The Court will so rule. The objection is overruled. You may call down the jury and proceed.

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[fol. 696] J. D. ROGERS, recalled as a witness in behalf of the People, and testified as follows:

Mr. Clark: I was wondering, if your Honor please, if I could have the bailiff close the light from the door there. That is better; thank you.

Direct examination (Continued).

By Mr. Barnes:

Q. Now, Mr. Rogers, to give you the continuity of our thought, I am going to read to you one or two questions and answers that are in the record from yesterday and then we will go ahead from there. "Q.—Did you see this defendant [fol. 697] at any time in the month of September, particularly about the 21st of September, 1932? A.—Yes, I seen him the day of the accident. Q.—Was there an accident on or about the 21st day of September, 1932? A.—What was the question?"

The question was then read by the reporter and then your answer, "Yes, sir". "Q.—Did you go to the scene of the accident? A.—Yes. Q.—Prior to going to the scene of the accident did you see this defendant? A.—Yes. Q.—Where did you see him? A.—I saw him at Glenn Cove.

Q.—When you saw him, what did he say to you?" That was the question that provoked the argument. I take it that the objection was overruled to that?

The Court: Yes, the objection was overruled.

By Mr. Barnes:

Q. All right, you may answer that question, Mr. Rogers: When you saw Mr. James at Glenn Cove, what did he say to you or what did you say to him?

A. Well, I didn't see——

Mr. Clark: The question in its present form is different from a moment ago and I object to it as being incompetent, irrelevant and immaterial and that it calls for hearsay testimony, namely what this witness said to the defendant.

The Court: The objection is overruled; you may answer.

A. Mr. James didn't come to me when he came to Glenn Cove.

Mr. Clark: I move to strike that out, your Honor as incompetent, irrelevant and immaterial.

The Court: It will be stricken.

[fol. 698] By Mr. Barnes:

Q. You did see Mr. James at Glenn Cove?

A. Yes, I did.

Mr. Clark: Just a minute; that is objected to on the ground that it is incompetent, irrelevant and immaterial.

The Court: Overruled.

By Mr. Barnes:

Q. And you did talk to him?

A. Yes.

Mr. Clark: Now, just a moment; if the Court please, I hope to interpose an objection to each question asked and I would like to have your Honor give me opportunity to voice my objection before the witness answers.

The Court: Just hold your answers until the attorney objects. You may proceed.

By Mr. Barnes:

Q. Now, leaving out what you had learned had happened before, but coming directly to the proposition of what you

said to the defendant and what he said to you, when you first saw him in Glenn Cove——

Mr. Clark: Just one moment. That is objected to on the ground that it assumes facts not in evidence and that the evidence is irrelevant and incompetent. The assumption is that this witness had some other source of information. I do not think that that information should be given to the jury.

The Court: Well, it does already appear from the evidence that he knew that there was a circumstance——

Mr. Barnes: Something was said a few moments ago, to [fol. 699] the effect that when Mr. James first came to Glenn Cove, something had occurred in my asking him to leave that out.

The Court: All right; the objection is overruled.

By Mr. Barnes:

Q. Leaving that portion out, when you did see Mr. James and had a conversation with him, tell us what you said and what he said in substance as far you now recall.

Mr. Clark: The same objection.

The Court: The same ruling.

A. Mr. James told me he had an accident up the road. I asked him where.

Mr. Clark: I cannot hear the answer of the witness.

A. I asked him whereabouts on the road and he said he didn't exactly know. I asked him if the machine was badly hurt, and he said he didn't know. Then I got a truck and took Mr. James to where the accident was.

Mr. Clark: That was all in the conversation you had with him at that time——

Mr. Barnes: Just a moment. May I examine him?

Mr. Clark: I beg your pardon; I should not have asked him. I am sorry.

By Mr. Barnes:

Q. Now, stopping there for just a moment, before you start up the trail, how far is it, approximately, from Glenn Cove to the top of the Peak?

Mr. Clark: That is objected to on the ground that it is immaterial and irrelevant.

[fol. 700] The Court: Well, I will sustain it upon the ground it has been asked and answered.

Mr. Barnes: Did he say seven miles?

The Court: Yes.

Mr. Barnes: Very well. Is Glenn Cove above the timber line?

Mr. Clark: That is objected to upon the ground it is incompetent, irrelevant and immaterial.

The Court: Overruled.

A. No, it is right at the timber line.

By Mr. Barnes:

Q. And from Glenn Cove up to the top of the Peak, state whether or not it is wooded or has timber or brush upon it.

Mr. Clark: That is objected to as incompetent, irrelevant and immaterial.

The Court: Overruled.

A. Mostly rocks and grass and no timber.

Mr. Barnes: After having this conversation now—Withdraw that. About what time was it that you saw Mr. James or had the conversation that you have related?

Mr. Clark: That is objected to upon the ground that it is irrelevant and incompetent.

The Court: Overruled; he may answer.

A. Sometime around 7 o'clock.

By Mr. Barnes:

Q. And what was the condition of the daylight, as to whether it was light or dark at that time?

[fol. 701] Mr. Clark: That is objected to upon the ground that it is irrelevant and immaterial.

The Court: Overruled.

A. It was then dark.

Mr. Parsons: What was the answer?

Mr. Barnes: "It was then dark."

Q. Did you go up to the place where the accident had occurred?

A. Yes.

Q. In what sort of conveyance?

Mr. Clark: That is objected to.

The Court: He has already testified that it was in a truck.

By Mr. Barnes:

Q. What kind of a truck?

A. A Ford truck.

Mr. Clark: That is objected to——

The Court: Objection overruled.

A. A fruit truck.

By Mr. Barnes:

Q. Did you turn on the lights, or were you without lights?

A. I turned on the lights.

Q. Did you observe, just prior to the time that Mr. James got in the truck with you his clothing?

Mr. Clark: Just a moment; that is objected to upon the ground that it is incompetent.

The Court: Overruled.

[fol. 702] A. Yes.

By Mr. Barnes:

Q. What did you notice about it?

Mr. Clark: That is objected to on the ground that it is immaterial and irrelevant.

The Court: Overruled; you may answer.

A. I didn't see nothing wrong with his clothing.

By Mr. Barnes:

Q. Well now, state whether or not his clothes were neat or disheveled?

Mr. Clark: That is objected to as immaterial and irrelevant.

The Court: Overruled.

A. They seemed to be neat.

By Mr. Barnes:

Q. Did you notice any dirt or other substance upon them?

Mr. Clark: That is objected to upon the ground that it is immaterial and irrelevant.

The Court: Overruled.

A. No.

By Mr. Barnes:

Q. Who rode with you in the driver's seat of the truck?

Mr. Clark: That is objected to on the ground that it is incompetent, irrelevant and immaterial.

The Court: Overruled.

A. Mr. James.

By Mr. Barnes:

Q. Was he sitting next to you?

The Court: The same ruling; you may answer.

A. Yes.

[fol. 703] By Mr. Barnes:

Q. Did you talk to him on the way up as to how this thing had occurred?

Mr. Clark: Objected to upon the ground that it is irrelevant and immaterial.

The Court: Overruled.

A. Yes.

By Mr. Barnes:

Q. State that conversation.

Mr. Clark: That is objected to upon the ground that it is irrelevant and incompetent.

The Court: Overruled.

A. He told me he was looking across the—

By Mr. Barnes:

Q. Keep your voice up, please, Mr. Rogers.

A. He told me he was looking across the valley with a

pair of field glasses. I did say to him that I didn't think you could see much with field glasses at that time of night.

A. And what did he say in reply to that?

Mr. Clark: The same objection, if your Honor please.
The Court: Objection overruled.

A. He said, "I really don't know how it happened."

Mr. Clark: Again my associates complain that they cannot hear the witness. I am sure that the jurors do not get the answer.

The Court: Speak up a little louder.

Mr. Barnes: May I have the jurors indicate when they cannot hear?

The Court: Yes, speak up if you cannot hear. We want [fol. 704] everybody to hear, so speak up if you don't hear any witness or any attorney and if I don't talk loud enough.

By Mr. Barnes:

Q. What was said as to who was driving the car at the time of the accident?

Mr. Clark: That is objected to on the ground that it is incompetent, irrelevant and immaterial.

The Court: Overruled; you may answer.

A. He told me his wife was driving the car.

By Mr. Barnes:

Q. Did Mr. James make any statement about the manner in which he was riding or looking at the scenery?

Mr. Clark: Objected to on the ground that it is irrelevant and immaterial, whether he made any statement or not.

The Court: Overruled. You may answer.

A. He told me—

Mr. Clark: Just a moment; may I ask that he answer categorically?

The Court: Yes, answer that "yes" or "no."

A. Yes.

By Mr. Barnes:

Q. What did he say about it?

Mr. Clark: That is objected to on the ground it is incompetent, irrelevant and immaterial and no foundation has been

laid for the introduction of such testimony and the reason that I contend no foundation has been laid, is that it has not been shown that the evidence relates to this offense or that it has any logical tendency for the commission of this offense, or to disclose any scheme in the execution of which [fol. 705] the two alleged crimes were committed.

The Court: Overruled.

Mr. Barnes: I pretty nearly forgot the question.

(Question read by the reporter.)

A. He stated he was looking through these glasses and I asked him if he didn't know that that car was going over the switch-back and he said he didn't know.

Q. You asked him how he got out of the car?

Mr. Clark: Just one moment. That is objected to on the grounds last stated and upon the further ground that it is leading and suggestive.

The Court: Overruled.

A. He stated to me that he went off with the car 50 feet.

Mr. Barnes: I don't understand that, sir.

A. He stated he went over with the car down 50 feet and jumped.

Q. What did you say to him?

Mr. Clark: That is objected to upon the grounds last stated, and upon the ground that it is leading.

The Court: Overruled.

A. I told him that he must have made a perfect landing.

By Mr. Barnes:

Q. And what did he say?

Mr. Clark: Now, the same objection, your Honor—

The Court: The same ruling.

A. He said that he didn't know—he told me that he had fell down.

[fol. 706] Mr. Barnes: Your Honor, I would like to have the witness draw on the blackboard if I may—

The Court: We have another blackboard in the anteroom.

Mr. Clark: I would much prefer if the drawing be made on paper so that we will be able to embody our drawing in the record.

The Court: You can produce any diagram on paper, but I think it would be satisfactory to put it on the board.

Mr. Clark: Well, if it can be produced upon paper in any event I would prefer to have it on a larger scale.

The Court: I think that is a matter that we don't have any interest in.

Mr. Clark: Well, I was trying to answer your Honor's question.

The Court: I was trying to aid you.

Mr. Clark: Well, I don't know.

Mr. Barnes: Where does your Honor suggest putting the blackboard?

The Court: Where the jury can see it.

Mr. Clark: Of course, your Honor understands that we would object to any conditions that he observed in Colorado, for what he observed there is irrelevant.

The Court: That is understood. The objection is overruled.

Mr. Barnes: Mr. Rogers, I wonder if you would be so kind, sir, as to step down from the witness stand and draw us a diagram of that Pikes Peak road from Glenn Cove to the place where this accident occurred? Would you do that, [fol. 707] please?

Mr. Clark: We object to that upon the grounds last stated.

The Court: The objection is overruled. Talk up louder, Mr. Rogers.

A. Do we want this drawn to the road where the accident occurred?

By Mr. Barnes:

Q. Well, perhaps I can ask you this: How far is it from Glenn Cove to the place where the accident did occur, approximately?

Mr. Clark: Just one moment. That is objected to upon the ground that it is incompetent, irrelevant and immaterial.

Mr. Barnes: I withdraw it.

Q. How far is it from Glenn Cove to the place where the accident is supposed to have occurred?

Mr. Clark: We object to that as incompetent, irrelevant and immaterial.

The Court: Overruled.

A. Two miles.

By Mr. Barnes :

Q. And in that stretch of two miles are there few or many curves and switch-backs?

Mr. Clark: That is objected to upon the ground that it is incompetent, irrelevant and immaterial.

The Court: Overruled.

A. Quite a few curves.

By Mr. Barnes :

Q. Well, perhaps it might be impracticable to draw all of them, Mr. Rogers. Will you draw the road showing two [fol. 708] curves below and one curve above the place where the accident appear-d to have occurred?

A. Yes.

The Court: The same ruling. I am going to assume that your objection is introduced to all of the questions asked the witness and that each objection is overruled.

Mr. Clark: Then your Honor would rather I would not make the objection each individual time?

The Court: The record will show that you make the objection and that I overrule it.

Mr. Clark: This matter seemed to be so serious that that is the reason that I wanted to make the objection that the question was incompetent, irrelevant and immaterial.

The Court: If you want to supplement the objection, I am inviting you to make the objection, and I think, as I stated to the jury at the outset, I appreciate the ability of counsel on both sides of the case, and you are making your objection whenever you deem necessary. You may proceed.

Mr. Barnes: Do you remember that question, now?

The Court: Well, you indicated to the witness that he give the sign as to about where the accident was with two curves above and two below.

By Mr. Barnes :

Q. Will you draw that, Mr. Rogers, and by the way, when you draw it, draw a double line for the road, will you please. Draw the road fairly wide so that we can see it and the jurors in the jury box can see it plainly.

[fol. 709] (Witness does as directed.)

Q. Mr. Rogers, you have drawn on this blackboard and marked a point for the place on that road where this incident occurred, or at least where the car was when you saw it.

A. When I found the car?

Q. Yes, when you found the car.

The Court: Mark it with a big "X" there so we can all see it.

(Indicating on map.)

By Mr. Barnes:

Q. Now, will you run an arrow, and point the arrow downward, so that we will know which way is down.

A. Yes, sir. (Indicating on blackboard.)

Q. Now, that is—I wonder if you would draw the next curve above the accident. Can you do that? Will you put that in here, please, that curve?

A. Yes. (Indicating.)

Q. Thank you, sir. Now, perhaps you can sit down, Mr. Rogers and take this pointer and point to these various places. The place where you have marked there with a cross is the place that you saw the wrecked automobile?

A. Yes.

The Court: Answer out loud.

Mr. Barnes: I will get back here. Maybe that will help you.

Q. Did you observe that automobile before you actually got to that curve?

A. Yes.

[fol. 710] Q. How could you see that?

A. In this skyline when I was on this curve.

Q. That is by looking up—when you speak of the skyline, I suppose you mean when you looked up the mountain you could see some objects apparently on the mountain, shown on the light part of the sky, is that what you mean?

A. Yes.

Q. Where did you drive your truck to when you got out of the truck? Where did you stop your truck?

A. I stopped the truck right here.

Mr. Barnes: May we have that point marked? May I have the liberty of marking that with the Roman numeral I?

The Court. Yes. Perhaps we had better use the arabic number. We will mark the diagram 39 for identification.

By Mr. Barnes:

Q. I take it then you stopped your truck on the road below the place where the automobile was?

A. Below where the car went off.

Q. Below where the car went off?

A. Yes, sir.

Q. The point of the road that is near the top of this blackboard is near the Peak, and the point near the bottom is Glenn Cove. When you stopped the truck, what did you do?

A. I went down to the car.

Q. Down?

A. Down, yes. That is a switch there.

Q. I don't quite understand that. I understood from what you said before that this road was——

[fol. 711] Mr. Clark: May I ask that he lift his face?

A. It was down.

By Mr. Barnes:

Q. Faced down?

A. Yes, faced where the car went off. This is the lower road and I stopped right at that place.

The Court: I cannot hear you, Mr. Rogers.

A. I stopped my truck below where the car went off. I didn't drive the truck across.

By Mr. Barnes:

Q. Let me ask you this, Mr. Rogers: Do I understand you to say that the automobile had apparently gone off the road and gone this way and that it had kept on going——

Mr. Clark: Just a moment; that is objected to on the ground that it calls for a surmise.

The Court: Sustained on that ground.

Mr. Barnes: I don't see how it could be surmise-.

The Court: Well, the Court has ruled. In other words, it is also hypothetical as to what would have happened under certain conditions. I think it is hypothetical.

Mr. Barnes: Did your Honor notice where I was pointing?

The Court: Yes.

Mr. Barnes: Suppose your witness would say "Where would the truck go?" It would drop.

Mr. Clark: If that is the case, then the testimony of the witness would prove nothing, if he were allowed to answer [fol. 712] the question that way.

The Court: Gentlemen, I think you can show where the car was found and show where, if there were any, there were marks indicating where a car had gone off and there is some continuity of the physical scene between that point and the point where the car stopped.

Mr. Barnes: Very well.

The Court: As to where the car would have gone if it had continued, I don't think you could show that.

By Mr. Barnes:

Q. Going straight down hill was the hood straight down hill?

A. No the car was going to miss that lower road.

Q. Now then, we have in mind, Mr. Rogers, if you would correctly place this car on the diagram——

Mr. Clark: That is objected to as cross examination of his own witness.

The Court: Overruled.

By Mr. Barnes:

Q. How about that?

A. May I have that again?

Mr. Barnes: Will you read it, please?

The Court: Keep your voice up. We are not going to complain if you speak too loud, but we are going to have to ask to have you repeat if you don't speak loud enough.

(Record read by the reporter.)

By Mr. Barnes:

Q. Will you explain that, Mr. Rogers?

A. I will try to.

[fol. 713] Q. Make it plain to us.

A. This curve is known as a switch-back. It comes down and goes back. Now, this car left this road here and it con-

tinued down this way about 150 feet. Now, does that explain what you want?

Q. Well——

The Court: Well, from the point where it left the road to where it was found, is that down hill?

A. Yes, your Honor.

Q. Now, from the point where it stopped, if we continued the line, was that also down hill?

A. Yes.

Q. Was there any physical object which stopped the car or was in front of the car at the time that you found it?

Mr. Clark: Your Honor, may we have the same objections?

The Court: Yes, they may appear in the record; the objection is overruled.

A. Yes, this car ran across a rock here, if it stopped it.

By Mr. Barnes:

Q. And if the car continued to go down, that is, if a person were to walk down in the manner in which that car was going, it would have eventually come to the road, is that right?

A. Yes, you would come to the road if it came direct, straight.

Q. Yes. Is the road straight down from that car?

A. Well, partly to the side. That is over the switch-back.

Q. You mean on the inside of the curve?

[fol. 714] A. Yes, I drew that as I understand it. The car would be here.

Q. Well, would you put the "X" where it should be?

A. Yes (indicating on diagram).

The Court: Perhaps you had better leave the first "X" and leave the last "X" as——

Mr. Barnes: "X-2".

Q. Now, this is still down hill the way I am making this arrow?

A. Yes.

Q. All right. Now, as I understand it, from the place where you found this car, on down hill, looking straight down hill, you didn't see, unless you would look to the right

or left, you didn't see a portion of the road for some distance, is that right?

A. Looking this way——

Mr. Clark: That is leading and suggestive.

The Court: Overruled. I think that the diagram in front of you would show.

A. Looking down this road.

By Mr. Barnes:

Q. No, no; from the place where the car was.

A. Can I show this road here? Is that it?

[fol. 715] Q. I don't know how to make myself plain.

A. Well, here it is.

Q. If you look directly, and do not look to one side or the other, would you look across a portion of the road?

A. No.

Q. How far is it from that point to the place where you finally hit a road down here?

A. You wouldn't hit no road. You come down here to a creek, looking straight from the car; you would not get near this road.

Q. Very well. Now, how steep is the mountain at the place where "X-2" is marked?

A. About 20 per cent grade.

Q. And is it 20 per cent on the way to the car, or less?

A. It takes up to 30 or 35.

Q. How far from the place where "X-2" is?

A. Approximately 30 feet below here.

Q. 30 feet farther on?

A. It gets steeper.

Q. What per cent?

A. 30 or 35 per cent.

Q. About how far was "X-2", the place where the car was, from the edge of the road?

A. 150 feet from here to where the car left this road here.

Mr. Barnes: May I mark that on the diagram?

[fol. 716] The Court: You may.

Mr. Barnes: And I will put it out like this, to make it plain. That distance is 150 feet when you parked your truck?

A. Yes.

Q. And you walked down to the car?

A. Yes.

Q. What did you see when you got to the car?

A. Mrs. James was laying with her head downhill, on the right-hand side of the car. Her feet were on the running board, either one or both; I couldn't say for sure. Her head was laying downhill.

Q. When you referred to "the right-hand side of the car", I suppose you meant—I withdraw that. When you refer to "the right-hand side of the car", do you refer to the side of the car that has the steering wheel on it, or the other side?

A. The other side.

Q. State the condition of Mrs. James at that time. State whether or not she was wrapped in a blanket, or just what her condition was as you looked at her?

Mr. Clark: That question is compound.

The Court: I don't think so. Basically it inquires as to the condition of her clothing. You may answer.

A. There was no blanket on her at that time. Her clothing was smeared with blood.

[fol. 717] By Mr. Barnes:

Q. Did it appear to have these smears all over it?

Mr. Clark: Well, I object to that—

The Court: I think the question is a little ambiguous.

By Mr. Barnes:

Q. Well, describe the condition of the clothing as you saw it there, as to whether or not the clothing had dust and dirt on it?

A. I didn't see no dirt on her clothes.

Q. What was—what sized obstacle was it that the car was up against at the position "X-2" there?

A. It was up against a rock about 2 feet high, probably about 4 feet square.

Q. And what part of the car was against it?

A. The left front wheel.

Q. Was the car standing up on its wheels, or laying on its side?

A. The car was on its wheels.

Q. Did you look into the car?

A. Yes, sir.

Q. What did you see?

A. There was a lot of blood in the car.

Q. Where?

A. There was blood on the cushion.

Q. What part of the cushion?

A. The back cushion, on the right-hand side. There was blood on the side.

[fol. 718] Q. On what part of the side?

A. Mostly on the right, and there was blood on the floor, the floor boards of the car.

Q. Did you see blood there?

A. A small blood stain somewhere.

Q. Where was it?

A. It was on the floor boards, near the hammer.

Q. What was the condition of the hammer?

A. Well, there was blood all over the hammer.

Q. Were there any other tools there?

A. No, there were no tools in the front of that car, except that hammer.

Q. Did you find any blood on the left-hand side, under the driver's wheel?

A. There was some on the floor boards, but not on the cushion.

[fol. 719] Q. Did you cause the lady, Mrs. James, to be removed from that place? By "that place", I mean "X-2", beside "X-2". Did you take her away or cause her to be taken away?

A. Yes.

Q. How?

A. Well, I examined the woman, looked at her, and had to go down on one knee by her face to find out whether she was alive or dead.

Q. You listened for her breathing, did you?

A. Yes.

Q. How far was your face from her face at that time?

A. Probably 4 or 5 inches.

Q. Did you notice anything at that time?

A. I smelled liquor.

Q. Was it a strong, or a weak odor?

A. Pretty strong.

Q. Did you assist in lifting Mrs. James?

A. Yes, sir.

Q. And when you lifted her, which end did you take, the end with the head, or the feet?

A. I put both my hands under her head.

Q. When you did that, did you feel anything about the head?

A. Yes, there was a softness behind the ear which I thought might have been a bruise.

Mr. Clark: Just a moment. I move to strike——

[fol. 720] The Court: "Which", and so forth, will be stricken out.

By Mr. Barnes:

Q. You indicated there with your left hand. Do you remember whether it was the left ear, or right ear?

A. As near as I can remember, I thought it was the left. Of course, I might be mistaken there, but I know I found a soft place in that woman's head when I put my hands under her head, when I picked her up.

Q. Was she carried back up the hill to the road?

A. No.

Q. Which way was she carried?

A. The woman was carried down to this road here.

Q. You carried her down, and a little bit to the left, until you came to the road?

A. Yes.

Q. Did you see the ambulance come?

A. Yes, I seen the ambulance come at Glenn Cove, as I had the woman down on this switch-back.

Q. You had placed her there on level ground on the switch-back?

A. Yes.

Q. On a stretcher, or——

A. On a stretcher.

Q. You took a stretcher with her?

A. Yes, there was four men carried her out, including myself.

[fol. 721] Q. Was Mr. James one of them?

A. No, he was walking behind.

Q. While you were here examining this accident, and examining Mr. James, where was Mr. James?

A. Mr. James was, when I noticed him after I got straightened out to remove the woman, was sitting probably 20 or 25 feet away, on a rock.

Q. And after having taken the lady that you found there to this switch-back on this stretcher, did your wait there until the ambulance got her and took her away?

A. Yes.

Q. And you saw that occur?

A. Yes.

Q. Then after that did you go back to the place where the car was and trace the tracks of the car?

A. Yes.

Q. Describe to the jury where you traced them to, and indicate with the pointer, if you will.

A. After I loaded the woman down here, I walked back up to where my truck was right here. Then I called the man's attention to stop, because I wanted to investigate the tracks of the car here. As part of my duties—

Q. Wait a minute, now. Here is the car right here. This is the roadway in here. Now, just indicate the roadway, please.

A. I went over here to where this car went off. I traced [fol. 722] these tracks back approximately about 80 feet.

Q. Was that in the turn part, where you traced them back?

A. Yes, right in here.

Q. All right.

A. Now, this car came down and turned just a little ways. Instead of turning plumb around, it only just turned a little and started and went approximately 80 feet until I went over here.

Q. Then from there where it went off it went 150 feet down the hill until it came in contact with this rock?

A. Yes.

Q. Now, did you notice any footprints about the tracks on the road around there?

A. There was footprints starting here back about 80 feet from where the car went off. There was footprints down alongside of the car there where it went down, and where it went off the road.

Q. On what side of the tracks were those footprints?

A. They were on the left side.

Q. That would be the side that the steering wheel of the car was on, is that what you mean?

A. Yes, sir.

Q. And did you see any place where the car had apparently stopped in that turn?

Mr. Parson: Just a moment. That is objected to as calling for an opinion.

[fol. 723] The Court: Sustained.

Mr. Barnes: Well, did you trace these tracks to the place where they began?

A. Yes. Apparently this car had stopped back here about 80 feet, and the tracks went around on to the right side—

Mr. Clark: Just a moment.

Mr. Barnes: By "the tracks" you mean the feet tracks?

Mr. Clark: Just a moment, if you please. I want to move to strike out the part of the witness' answer beginning with the word "apparently".

The Court: Granted.

Mr. Williams: May the record show that the motion to strike is from the word "apparently" to the word "stopped"?

The Court: That portion of the answer of the witness is stricken, in which the witness gives his opinion that the car had stopped. He can state what he saw, and the jury will draw the opinion whether the car stopped.

Mr. Barnes: You can't say, under the rules of evidence, that apparently something happened, or that something did happen that you didn't actually see, but you can tell what there was that you did see that led you to draw certain conclusions. What physical facts you did see you can describe. Now, do I make myself clear, sir?

A. Yes.

Q. Now, then referring to these foot tracks beside this car, were all the foot tracks you saw there pointed in the [fol. 724] one direction, toward the road, or was there a place where foot tracks were going in another direction?

A. They went—

Q. I wish you would point to the road, sir?

A. Went around where this car had stopped.

Q. When you say "where this car had stopped", you didn't see it stop?

A. No.

Q. There may have been something in the roadway there that indicated to you that it had stopped. If there was, please tell us what that was?

Mr. Clark: That is objected to on the ground that it is leading and suggested to on the ground that is leading and suggestive, remote, and speculative, calling for an opinion of the witness.

The Court: I think the question perhaps should be re-framed. The apparent opinion of the witness as to where the car stopped will be stricken, and the jury is instructed to disregard it. Technically the witness hasn't said anything with reference to whether the car had stopped, either directly or indirectly.

Mr. Rogers, you back-traced the automobile, is that right?

A. Yes, sir.

Q. And you back-tracked certain footprints?

A. Yes, sir.

Q. Now, did the footprints have the same appearance all [fol. 725] the way up to the point where they ended?

A. Yes.

Q. Did the car tracks have the same appearance from the point where the car apparently left the road to the place that you refer to as about 80 feet back? Was there any difference in the automobile track prints at any point?

A. No, the prints was the same.

Mr. Barnes: Was there a place where there seemed to be a double set of foot tracks?

A. Yes.

Mr. Clark: One moment. That is leading and suggestive. I will waive the objection now.

By Mr. Barnes:

Q. About how far was that from the place where the car had started to go down the hill?

A. About 80 feet.

Q. That is the place you say was 80 feet?

A. Yes.

Q. Now, did that double set of foot tracks go in a straight line, or in a circular line, or how did they go? How did they go, now? Just tell us?

A. The footprints back here 80 feet started here and went around that way.

Q. That is, you could tell by the toe and the heel?

A. Yes.

Mr. Clark: That is objected to as leading and suggestive.

Mr. Barnes: They were pointing in a certain direction, [fol. 726] is that what you mean?

Mr. Clark: Leading and suggestive.

The Court: Overruled.

Mr. Barnes: Is that what you mean?

A. Yes, the toe of the shoe pointed around this way.

Q. Did you see another track pointed in any other direction?

A. It started back and came back here. Is that clear?

Q. Yes, that is clear; thank you. That was about 80 feet back from the edge of the road?

A. Yes, sir.

Q. Did you find any glassware of any kind in the car?

A. Yes, there were some bottles in the car.

Q. Did any bottles, or one of the bottles, have a liquid content?

A. Yes, one of the bottles had some liquid in it, and I figured—

Q. Did you examine it to see what it was, pull the cork out?

A. Yes.

Q. What did it smell like?

A. It smelled alcohol to me.

Q. What color was it?

A. Well, it was—you would call it a light red, a kind of whiskey color.

Q. Did the bottle have a label on it?

[fol. 727] A. Yes, it had a Mexican label.

Q. What was on the label?

Mr. Clark: Just one moment—oh, I guess I need not make the objection. It is not the best evidence. Obviously the label could not be produced.

The Court: You may answer. What was on the label?

A. Well, it was a Mexican brand of liquor; I don't just remember what it said.

By Mr. Barnes:

Q. Was that a quart or a pint?

A. Well, I wouldn't swear to that, because I just don't know exactly.

Q. One or the other, was it?

A. Yes.

Q. And how much liquid was in the bottle when you saw it?

A. There was about two-thirds of it gone.

Q. Did you notice any odor of alcohol on the breath of Mr. James that night?

A. No.

Q. Did you see Mr. James afterward, after that night?

A. Yes, he came up, I don't know how long after.

Q. Approximately?

A. A day or so, or two; something like that.

Q. You would say within a day or two or three afterwards?

A. Yes.

Q. Somewhere along in there?

A. Yes.

[fol. 728] Q. Did you talk with him?

A. Yes.

Q. What did he say, and what did you say?

Mr. Clark: Just one moment. In addition to the general objection interposed, I wish to make the further objection to any statements or conversations with Mr. James that this being an attempt upon the part of the prosecution to prove a murder other than the one with which Mr. James is charged, that all of the rules for the proof of a crime must be observed, including the proof of the corpus delicti by other evidence than the admissions of the defendant, and that this testimony is incompetent upon that additional ground.

The Court: Without being understood as indicating that that rule, as stated in the objection, is a rule of universal application, the Court at this time will permit the variance in the order of proof in order to facilitate the placing of witnesses upon the stand in the natural chronological order. That ruling is made in view of the opening statement, and also in view of the offer of proof. The objection will be overruled.

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[fol. 729] By Mr. Barnes:

Q. Mr. Rogers, I think we were just about to ask you if you had a conversation with Mr. James a day or two or three after this accident. Do you recall that circumstance?

A. Yes.

Q. What was the conversation, Mr. Rogers?

Mr. Clark: Just a moment; to which we object upon the ground not covered by the general objection, that the evi-

dence is incompetent in that it is an attempt to prove the corpus delicti by statements and admissions of the defendant, and for that reason the evidence is incompetent.

The Court: The objection is overruled, you may answer.

Mr. Barnes: You may answer, Mr. Rogers.

A. He asked me if I found a bottle in the car and I said "No". There were bottles there. Some of them were broke, but this one bottle wasn't broke. I told Mr. James it [fol. 730] was, because I wanted to keep this bottle for evidence of liquor in the car.

Q. In the event of some—

Mr. Clark: Just one moment, if you please. May I have an opportunity to make a motion?

The Court: Yes.

Mr. Barnes: Certainly.

Mr. Clark: I move to strike out all that portion of the witness's answer beginning with the word "because".

The Court: Motion granted.

Mr. Clark: And the jury be admonished to disregard it.

The Court: The jury has already been admonished, Mr. Clark, you recall, at the beginning of the trial that whenever testimony is stricken out they are to disregard it.

Mr. Barnes: Now, Mr. Rogers, I am going to ask you if the road as you have drawn it here upon the blackboard, and calling your particular attention to the curves in the road, in the switch-back, whether that fairly represents the width of the road at the curves or whether the road at the curves is wider or narrower than as shown there?

A. The road at the curves is twice as wide as the road going along here.

Q. In what we might call the straight-of-way then you are indicating?

A. This switch-back is what is known as a 60 feet radius. And now it is twice as wide here as that road is back there. [fol. 731] Q. I see.

Mr. Williams: For the purpose of the record, your Honor, may it be indicated that the witness is referring to the first point he is referring to the curve and the latter point he was referring to the straight-of-way.

The Court: It may — so indicated.

By Mr. Barnes:

Q. Can you draw us one segment of this road we will say the portion that I am now indicating, larger, here in the corner, and make the width of the road more or less correspond to the road as it was?

Mr. Clark: To which drawing, of course, we object, upon the same ground that we objected to the previous one.

The Court: Same ruling. Objection overruled.

Mr. Barnes: Can you do that, Mr. Rogers?

A. I can try it; I don't know whether I can or not.

Q. All right, if you will please?

A. If I understand you right you want this road here?

Q. That portion that I am now indicating.

A. Now, you better write which road up there.

Q. If you will just draw it a little larger than it is drawn there and show us.

A. That is as near as I can draw it. (Drawing.)

Q. Thank you very much. Now, if you will just resume your seat, please. These footprints that you have described from a place about 80 feet above the car, ran off the road to the place it went off the road they were along the left-[fol. 732] hand side of the car tracks and where were the toes pointing on those tracks?

A. They were pointing to where the car went off.

Q. And can you describe the appearance of the footprints as to whether they appeared to be similar to a man's or a woman's footprints?

A. To a man's footprints.

Q. Now, at the time the defendant came for you—or you saw the defendant out near the cafe before you went up to the scene of the accident and that night when you did see him, did the defendant cry?

A. He moaned a few times. I don't know whether the man was hurt or moaning for his wife.

Q. Did he cry, is what I asked you.

A. No.

Q. Did he appear to be worried?

Mr. Clark: Just one moment; I shall object to that on the ground that no foundation has been laid for such testimony in that it is not shown that the witness had such an acquaintance and there is no evidence——

The Court: The objection is overruled. It is not received. It is the Manoogin case rule and that covers the cases.

Mr. Barnes: You may answer. Did he appear to be worried?

A. No, he appeared quite calm.

Q. Calling your attention now to the place that you indicated where you saw these footprints going in a somewhat [fol. 733] circular direction, state whether or not the footprints at that point, went around to the right tracks of the car.

A. Yes.

Q. And which way did the toes of the prints point?

A. Going around it is opened up this way.

Q. Perhaps you can indicate.

[fol. 734] A. Made a circle of that kind, (indicating).

Q. That is, around from the left side tracks to the right side tracks. Now, how about the other way?

A. Coming right back, stopping here, coming right on to where the car went off the switch-back.

Q. Then as you looked at the prints, those appearing on the return from the right side of the tracks, and the left side, did they continue right on then straight down to the place where the car had left the road?

A. Yes.

Q. Were there any other cars came down from the top of Pike's Peak at the time, or from the time that you first saw Mr. James that night?

Mr. Clark: Just a moment. That question is objected to in its present form as being immaterial, and calling for facts clearly not within the knowledge of the witness. The question was so framed as to involve any cars coming down the road, whether they came from the top of the peak, or some intermediate place.

The Court: The objection is well taken; sustained.

By Mr. Barnes:

Q. Is there any other road than the road you have been talking about here that runs into Pike's Peak at any point between the top and Glenn Cove?

A. No road for an automobile; one railroad is all.

Q. Are you able to say whether or not the James car was the last car on that road that night, that afternoon?

[fol. 735] Mr. Clark: Just a moment——

The Court: You can answer that "yes" or "no", first.

A. No.

By Mr. Barnes:

Q. Did you see any other car that night?

A. After this car came down?

Q. Yes.

A. No, this was the last car on the hill. The rest of them were checked out.

Mr. Barnes: That is all.

Cross-examination.

By Mr. Clark:

Q. Now, the town of Glenn Cove, to which you have referred in your testimony, is in the State of Colorado, as I understand it? Is that correct?

A. Yes, sir.

Q. It is a little town lying somewhat at the foot of Pike's Peak, is that also correct?

A. Yes.

Q. It is, then, I take it, only a few miles from the large place of Colorado Springs, is that correct?

A. I didn't understand that?

Q. It is only a few miles, then, from Colorado Springs, isn't it?

A. 22 miles from Colorado Springs to Glenn Cove.

Q. And Glenn Cove is situated upon the Eastern Slope of [fol. 736] the Rockies, is it not?

A. Yes, sir.

Q. What would you say its elevation is?

A. 11,425 feet.

Q. Timber line there is, oh, something over 10,000, isn't it?

A. A little over 11,000.

Q. And Glenn Cove, then, is not up to timber line?

A. Just about.

Mr. Barnes: Mr. Clark, may I interrupt just a moment?

Mr. Clark: Certainly.

Mr. Barnes: I neglected to show this witness the picture, and I would like to do it as part of my direct, if I may.

Mr. Clark: Of course, anything you overlooked, I would rather you do it right now.

The Court: You may reopen it.

Mr. Barnes: I would like to reopen the direct, your Honor.

Mr. Clark: Mr. Barnes, if you will approach the bench with me, I may be able to offer a stipulation.

The Court: I don't think the Reporter need come up.

Mr. Clark: No.

(Discussion at bench.)

Mr. Clark: If you gentlemen will hand the photographs to Mr. Barnes, I think he can separate them so that we can offer a stipulation as to some of them. Might I inquire [fol. 737] what the number of the last exhibit is?

The Court: 39 is the black board diagram.

Mr. Clark: I have had submitted to me by counsel for the prosecution four photographs—

Mr. Barnes: Counsel doesn't think we can stipulate.

Mr. Clark: I will not state the stipulation.

Mr. Barnes: I have here three photographs which I will ask to have marked for identification, your Honor, as—40 is the next number, is it, your Honor?

The Court: 40, yes.

Mr. Barnes: 40, 41 and 42.

Mr. Clark: If I may come around and see which photographs you are referring to.

Mr. Barnes: 40, 41 and 42.

Mr. Clark: Are you offering them at this time?

Mr. Barnes: I just had them marked for identification.

Mr. Clark: That is all right.

Mr. Barnes: And if I may have those marked as 40, 41 and 42 for identification, your Honor?

The Court: Yes.

Direct examination (Continued).

By Mr. Barnes:

Q. I show you, Mr. Rogers, a picture marked People's Exhibit 40 for identification. Have a look at that, please, sir, and state whether or not that picture fairly represents the topography of that country concerning the turn in the [fol. 738] road where this accident occurred, as it existed about September, 1932?

Mr. Clark: The competency of that question is objected to upon the grounds that have been expressed in the reasons for the general objection that I have made, and I object to the question as calling for an opinion which it has not been shown that the witness is competent to express, and in that connection, if your Honor has any doubt as to the validity of the question, I would like to ask a few questions on voir dire.

The Court: You may do so.

By Mr. Clark:

Q. The fact is, sir, that a great deal of rural work has been done on that road since you saw the defendant there, isn't that true?

A. Yes, that is true.

Q. It is also true that the photograph which you hold in your hand has been taken within the last few weeks?

A. I just couldn't state when it was taken.

Mr. Barnes: We will agree to that, Mr. Clark.

By Mr. Clark:

Q. And it shows the conditions as they existed long after the work that we have just spoken of was done?

A. Yes, this is the place.

Q. It doesn't show the conditions as the conditions existed there before the work was performed, during the last four years, does it?

[fols. 739-742] A. There was no work done during the last four years.

Mr. Clark: I move to strike that answer as being a matter of opinion.

The Court: Well, I think that it is at least partly responsive. The motion will be denied.

By Mr. Clark:

Q. You didn't take the photographs, yourself?

A. No, sir.

Q. You were not present when it was taken?

Mr. Barnes: I think that is a matter of cross-examination.

The Court: I think so.

[fol. 743] By Mr. Barnes:

Q. Calling your attention to People's Exhibit 40 for identification, does that photograph fairly represent the condition of the topography of that country about the place where this accident happened, as it appeared on or about September, 1932?

Mr. Clark: That question is objected to upon the ground that it calls for an opinion or a conclusion which the witness is not competent to give and it calls for a comparison between the conditions depicted upon the photograph and those which existed in 1932, and such comparison is incompetent in that no foundation has been laid for the introduction of the photograph, and of course, the general objection that has been interposed to all of this line of testimony.

The Court: Any objection will be overruled.

Mr. Barnes: Will you read the question now, Mr. Reporter, so the witness may answer it?

(Question read by the reporter.)

A. The road is the same, but this snow here on this picture that you see, those spots, wasn't there then. Of course, that snow doesn't interfere with the road. This road is [fol. 744] clear, this switch-back, the same as it was when this car went over. I don't see any snow right on that road there.

Q. Aside from the snow as it appears on the hill, would your answer be that it does substantially show those conditions as they existed in September, 1932?

A. Yes.

Q. Calling your attention now to the roadway shown in this picture, is that a picture of the road on this particular turn where the car went over?

Mr. Clark: Just one moment. Nothing other than the general objection.

The Court: Overruled. You may answer.

The Witness: May I have the question, please? Is this the picture of the switch-back, is that what you want to know?

Mr. Barnes: The witness said to me "Is this a picture of the switch-back, is that what you want to know?" Keep

your voice up, please, Mr. Rogers, because the jury has to hear everything. Yes, that is what I want to know.

A. Yes, that is the picture of the switch-back.

[fol. 745] Mr. Barnes: Now, calling your attention to People's Exhibit No. 41 in evidence, this picture which shows the general topography of the country, do you recognize any particular rock in there as being one about which you have testified here?

A. Yes, this rock here.

Q. You are pointing—

Mr. Clark: Showing a rock in the middle of the foreground somewhat slightly to the left of the exact center.

Mr. Barnes: And between two men who are standing there.

Mr. Clark: No, my eyes don't see the two men.

[fol. 746] Mr. Barnes: Well, mine do, Mr. Clark.

Mr. Clark: That is not very distinct.

Mr. Barnes: One man, I beg your pardon.

Mr. Clark: I see one man very distinctly.

Mr. Barnes: All right. The rock that you refer to and pointed to is near a man, is that correct?

A. Yes.

Q. The only man shown in the picture?

A. Yes.

Q. What rock is that?

A. That is the rock where the car stopped the night it went over the bank.

Q. This picture is taken looking with the camera facing or looking toward down hill, is it?

A. Yes.

Q. Calling your attention now to People's offer 42—by the way, while we are on this one picture, may I show this to the jury or would your Honor prefer to show them all a little later on?

The Court: I think perhaps we had better show them all at once.

By Mr. Barnes:

Q. Calling your attention now to People's offer 42 for identification, do you recognize the scene shown in the picture?

A. Yes.

Q. Does that fairly depict a portion of that mountain road—

[fol. 747] A. Yes.

Q. —as—

Mr. Clark: Just a moment. Let him finish asking the question and then I will object. Go ahead and finish your question, please.

Mr. Barnes: May I have the question as far as I went?

(Question read by the reporter.)

By Mr. Barnes:

Q. —as it appeared at a time about September, 1932?

Mr. Clark: That is objected to on all the grounds that were stated in the objections to the questions about the first photographs that were shown to the witness.

The Court: Objection overruled.

Mr. Barnes: You may answer.

A. Yes, this is part of the road.

Q. Can you tell us just what part of the road that is?

Mr. Clark: May it be understood that I am persisting in my objection to all questions concerning any of these photographs?

The Court: The general objection made by Mr. Clark is assumed to be made to each of these photographs as they are shown to the witness and to the questions that are asked, and it is understood that to each and every one of them the objections are overruled.

Mr. Clark: Thank you, your Honor. I don't think it will be necessary after this for me to stand up here and possibly [fol. 748] annoy Mr. Barnes.

Mr. Barnes: I will be glad to have you, Mr. Clark, if it will assist you in your examination of the witness.

Mr. Clark: I know you would be glad to have me, Mr. Barnes, but I am not anxious to have a comparison drawn between your appearance and mine.

Mr. Barnes: Was that last question answered, your Honor?

The Court: I think not.

Mr. Barnes: May we have the question read, Mr. Reporter?

(Question read by the reporter.)

A. Yes.

Q. Tell us, please.

A. This is the two curves below where the car went off.

Q. I have another one——

Mr. Clark: Mr. Barnes, may I be pardoned?

Mr. Barnes: Yes.

Mr. Clark: You will be on these photographs for quite some few minutes, won't you?

Mr. Barnes: Yes.

Mr. Clark: Then, I hope I won't seem discourteous if I leave the room for a short time.

The Court: May I ask if defense counsel desire to supplement the objection of Mr. Clark? Counsel now present will be deemed to have made the same objection that Mr. Clark made to all of this line of testimony.

Mr. Parsons: Thank you very much.

[fol. 749] Mr. Barnes: May I have this photograph I now hold in my hand marked 43 for identification?

The Court: So marked.

By Mr. Barnes:

Q. Showing you People's Exhibit 43 for identification, Mr. Rogers, I will ask you if, in this light you can see that, or if you would rather have the reporter's lamp. There is something in the picture I want you to notice particularly. May I borrow this light, Mr. Person?

The Reporter: Certainly.

By Mr. Barnes:

Q. Now, with that lamp, I call your attention to some writing shown upon a rock there. Have you ever seen that writing before?

A. Yes.

Q. Now, with reference to that writing state whether or not at the time you examined the tracks leading back from this car that you have described in this place whether it was near that writing?

A. Yes, the tracks started from the line of this writing, outside of the road.

Q. Does this picture, People's Exhibit 43 for identification, fairly depict the portion of the rock and the road as it appeared in September, 1932?

A. Yes.

Mr. Barnes: I have another photograph. May I have it marked as 44 for identification?
[fol. 750] The Court: Yes, it will be so marked.

By Mr. Barnes:

Q. Calling your attention to People's 44 for identification, do you recognize that scene as shown there?

A. Yes.

Q. What does it purport to show?

A. It shows part of the switch-off.

Q. Three people standing in that picture near a rock. Is that anyone near the rock that was shown you in the last picture?

A. Yes, sir.

Q. That is right close to that rock, is it?

A. Yes, right close to it.

Q. And does that road in that picture generally represent the general appearance of the road as it appeared in September, 1932?

A. Yes.

Mr. Barnes: Now, I have another photograph that I would like to have marked as 45 for identification, your Honor.

The Court: It may be so marked.

By Mr. Barnes:

Q. I show you another photograph with two cars and showing a portion of the roadway and a portion of the mountain, and showing some white patches which appear to be snow, do you recognize that picture?

A. Yes, sir.

Q. What is that?

[fol. 751] A. That is the switch-back where the car went off.

Q. And outside of the fact that there is snow shown in that picture, and as to the general condition of the topography of the country, does that fairly represent the conditions that existed there in September of 1932?

A. Yes.

Mr. Clark: May I see that?

Mr. Barnes: Yes. (Handing to counsel.) May I have this one that I now hold marked 46 for identification?

The Court: It will be so marked.

By Mr. Barnes:

Q. I show you People's Exhibit No. 46 for identification, and I will ask you if you recognize that turn in the road as there shown?

A. Yes.

Q. I see three men standing in this picture, one which appears to be on the edge of the road and appears farthest away. Were you present when this picture was taken?

A. Yes.

Q. And was that man standing, the one farthest away to which I have just directed your attention, standing in any particular place to your recollection here?

A. Yes.

Q. Where?

A. He was standing where the car went off the road.

Q. So where this one man now appears to be standing, who is wearing the overcoat, is the place where the car went off?

[fol. 752] A. Yes.

Q. The man standing on the righthand side of the picture, dressed in an ordinary suit of clothes, where was he standing?

A. He is standing on the inside of the switch-back.

Q. On the inside?

A. Yes.

Q. And the other man?

A. He is standing where the switch-back starts to cut into the side of the hill. This back road is cut into a mountain.

Q. And does that road, as you saw it there, fairly represent the condition of the road as it was in September of 1932?

A. Yes.

Mr. Barnes: I have another picture that I want to be marked 47, your Honor, for identification.

The Court: It may be so marked.

Mr. Barnes: I show you another picture now, apparently looking down hill. Do you recognize that picture and a certain rock shown therein?

A. Yes, sir.

Q. Does that picture fairly represent the part of the

country as you stand at the top of the road, where this car went off and looked down?

A. Yes.

Q. Will you point to the rock particularly that you recog-
[fol. 753] nize there?

A. This one here.

Mr. Barnes: May we have that rock marked in the picture there, your Honor, marked 1?

The Court: Yes.

Mr. Barnes: There are a number of marks there.

The Court: Do you want to mark it with ink?

Mr. Barnes: Yes, your Honor. There are a number. Draw a circle around the rock. It is not much of a circle, but that is the best I can do.

Q. Was that country, as you see it there, in substantially that same shape and condition in September of 1932?

A. Yes.

Q. We have spoken here of the timber line. Does this picture, 47 for identification, show the timber line?

A. Yes.

Q. By the timber line, do you mean the place where the trees that are shown growing in the picture end?

A. Yes.

Mr. Clark: Mr. Barnes, if I may be pardoned, I was born in Colorado and I have lived in the west all my life and the timber line is used to express the limit of growth of all timber as you go up along. Finally it gets so only the smaller vegetation occurs. The trees will no longer grow. That is the timber line. The latitude is governed by the topography. In fact, it may run up or down to a lower [fol. 754] latitude. Pardon me for making that statement, but I thought it was a convenient time to make it to the jurors who are not familiar with those conditions.

Mr. Barnes: I appreciate that.

Mr. Clark: The Court takes judicial notice of that.

Mr. Barnes: I know nothing about it personally, but I am very glad to have counsel make the statement. I am willing to adopt that in the way of a stipulation, so that the jury may consider that as a fact.

The Court: The species of vegetation is also a factor.

Mr. Clark: Yes, some trees are more tender than others. It depends in part upon the character of the trees.

Mr. Barnes: With the permission of the Court we may have that as a stipulated fact in this case.

The Court: Yes.

By Mr. Barnes:

Q. By the way, what is this rock that you have identified, and which we have encircled with pen and ink?

A. That is the rock that stopped the car.

Mr. Clark: What was the answer?

Mr. Barnes: "That is the rock that stopped the car."

Q. I show you another picture which I will ask to have marked as People's Exhibit 48 for identification.

The Court: It may be so marked.

By Mr. Barnes:

Q. Being a closer photograph of a rock. There is a man standing in the picture also, do you recognize the rock [fol. 755] there shown?

A. Yes, sir.

Q. What is that rock?

A. That is the rock that stopped the car, as far as I can see.

Mr. Parsons: Will you speak just a little bit louder?

Mr. Barnes: He said, "That is the rock that stopped the car, as far as I can see."

Q. And will you point to the rock, so that we can encircle that one? There are one or two others shown in the picture. Will you draw a circle around it, please, showing the whole rock?

A. That is the circle.

Q. We will go over it with a pen. Have you a pen?

Mr. Parsons: No.

Mr. Barnes: May I borrow your Honor's pen again?

Q. Now, the rock that we have encircled in ink is right next to a portion of what appears to be a large rock. Is that all one rock there or two rocks?

A. That is attached to the rest of it.

Q. Attached to the rest of it?

A. Yes.

Q. So it is attached to the portion that leads immediately to the left of the circle as you face—

A. I will try and explain it. Here is a rock here. This is a part of the rock and it runs back into the earth. The face of the rock is about four feet square and about three or [fol. 756] three and a half feet high. I do not know whether you can understand.

Q. Yes, I think that is clear. Now, I don't know what your Honor's purpose is, whether to permit cross-examination before the introduction of these exhibits.

The Court: It might be feasible in this case. Mr. Barnes is reserving the offer of the exhibits before the cross-examination.

[fol. 757] Mr. Clark: May I suggest to your Honor that if he is going to testify concerning these photographs that we will want to examine on cross-examination.

By Mr. Barnes:

Q. Did you see any blankets in the car that was involved in this accident?

A. Yes, there were two blankets, or more; two or three.

Q. And did you do anything with those blankets?

A. Yes, I got one of those blankets and wrapped it around this woman.

Q. What kind of a car was it? Was it a touring car, or sedan, or what?

A. A coupe, I guess you would call it. It was a two-seated car.

Q. Two-seated car?

A. One seat in the car, for one or two or three. There was no back seat.

Q. There was no back seat?

A. No, sir.

Mr. Barnes: Cross-examine.

Cross-examination.

By Mr. Clark:

Q. Now, Mr. Rogers, the mountains—may I withdraw that. The vegetation, of course, is heavier near the base of the mountains than near the summit, that is true, isn't it?

A. Yes.

[fol. 758] Q. And as you get up above the timber line, the character of the mountain becomes more rugged, doesn't it?

A. Yes.

Q. You have more sharp pieces of rock sticking up, projecting up above the general surface, don't you?

A. Yes.

Q. That condition is encountered when you come to building roads, isn't it?

A. Yes.

Q. The road building has encountered more difficulty because of that rocky character, hasn't it?

A. Yes, sir.

Q. Now, this road that you have been telling us about is a privately owned road?

A. It was at that time.

Q. It was at that time what you would call a toll road?

A. Yes, sir.

Q. That is, a charge would be charged to every person?

A. Yes, sir.

Q. And it was maintained entirely by private funds?

A. Yes, sir.

Q. And some place upon the road there was some barrier which automobiles could not pass until they had paid the required amount for the use of the road; that is true, is it not?

A. Yes, sir.

[fol. 759] Q. And it was being operated, was it not, as a money-making concern?

A. Yes, I think so.

Q. So that the policy was to take in as much, and spend as little as possible on the road, isn't that true?

Mr. Williams: That is objected to as immaterial.

The Court: Objection sustained.

Mr. Clark: I think it is material.

The Court: So far as the policy is concerned, objection sustained.

By Mr. Clark:

Q. Well, as a matter of fact, a great deal of money was not spent in keeping that road in condition, was it?

Mr. Barnes: Objected to as immaterial.

The Court: He may answer.

Mr. Barnes: It may not have needed the spending of very much money.

Mr. Clark: We will find out about that before we get through, I hope.

A. Well, there was enough money spent on the road to keep it in good shape for cars.

Q. The road was not paved, was it?

A. No, it wasn't paved; no.

Q. Now, is there anything that you can tell us about the road, where it went around curves? Was the road any different there than it was on straight-aways?

[fol. 760] A. Yes, it was wider.

Q. Is that the only difference?

A. Wide and elevated to protect the cars.

Q. And what?

A. Elevated.

Q. Elevated?

A. Yes.

Q. Do you mean raised up?

A. Raised a little to the outside, so it made it safer.

The Court: Do you mean the curves were banked?

A. Yes.

By Mr. Clark:

Q. Banked so that the outside would be higher than the inside?

A. Yes, sir.

Q. So as to make the cars hold the road?

A. Yes.

Q. That is what I was trying to get at. Now, I show you People's Exhibit No. 40. I am afraid I will have to stand here by you for a few minutes, Mr. Rogers. Two Coloradoists ought to get along for a short time without fighting.

A. We will get along all right.

Q. Now, tell me—I notice a wide bare spot extending down to the bottom of the picture. Is that the roadway?

A. This is the upper roadway, from here in to here.

Q. This indicating from where there is a ridge of rocks [fol. 761] along the right-hand margin of the picture, clear to the extreme left-hand margin, where an automobile has been parked, that is what you mean?

A. Yes.

Q. Now, what is the other bare space that seems to slope off downward, just beyond this ridge of rock?

A. That is the circle of the switch-back. The outside is what we would have to call here the lower road. You are contending with two roads right here.

Q. I see. Now, how much was this wider road, or the one that appears to be wider, how much was it banked, the road in the foreground?

A. Do you mean how high was this part of it from this?

Q. Yes, how much higher?

A. About 18 inches.

Q. Now, referring to the upper portion of the picture, that indicates the mountain slope above the road, does it not?

A. Yes.

Q. And I infer from that picture that the prevailing rock there is a granite, is that right?

A. Yes, I guess you would call it granite.

Mr. Clark: That is Exhibit No. 40. Now, you didn't take the photograph, yourself?

A. No.

Q. You weren't present when it was taken?

[fol. 762] A. Yes.

Q. When was it taken?

A. Well, now, I couldn't give the exact date, but when they came to me it was probably three weeks or a month ago.

Q. Do you know who took the picture?

A. Yes.

Q. Who?

(Witness points.)

Q. Mr. Southard?

A. Yes.

Q. Investigator for the District Attorney of this County?

A. Yes.

Q. So far as you knew it was taken for the express purpose of being used in the prosecution of this case?

Mr. Barnes: We submit that is not material.

The Court: Overruled.

Mr. Clark: Read the question.

Mr. Williams: If your Honor please, it is purely speculative.

The Court: Overruled.

Mr. Williams: I think, also, it calls for this witness' conclusion.

The Court: Overruled.

A. Yes.

By Mr. Clark:

Q. Now, I show you Exhibit No. 41. That was taken at [fol. 763] the same time, wasn't it?

A. Yes.

Q. And by the same person, wasn't it?

A. Now, I don't know for sure. There was a camer-man there, and this man that I spoke his name was there, and I couldn't say which one of them took the picture.

Q. Who was the camer-man?

A. I don't know the man's name.

Q. Was he a man who lived at Glenn Cove?

A. No, he didn't live at Glenn Cove.

Q. By the way, I notice the Reporter has it "Glenn Cove". Is that right, or is it "Glencoe"?

A. Glenn Cove is correct.

Q. Thank you. I was mistaken in the name, until I saw it in the transcript. Now, I show you People's Exhibit 42; that was taken at the same time, was it not?

A. Yes, it was taken at the same time.

Q. Either by Mr. Southard, or some other member of the party with him, isn't that true?

A. Yes.

Q. Mr. Southard directed the placing of the car in this photograph marked Exhibit No. 40, didn't he?

A. I don't know whether he placed that car there, or not. I was there, but I didn't pay any attention to what he was doing with the car.

Q. Well, now, I direct your attention to the man stand-[fol. 764] ing at the rock in Exhibit No. 41. Mr. Southard directed the man to stand there, didn't he?

A. Yes.

Q. How many people were present when these photographs were taken?

A. There was five.

Q. Do you know the names of any of the others of them?

A. Yes. The Deputy Sheriff of Colorado Springs was there.

Q. What was his name?

A. Emmett Knight.

Q. There was Emmett Knight, Mr. Southard, yourself, and do you know the names of either of the others?

A. No, I don't.

Q. Were the others local people, or not?

A. So far as I know, they belonged to Colorado Springs. One of them happened to be an ambulance driver, I think, that removed the——

Q. Just pardon me. I think an ambulance driver is sufficient. Now, was he the same ambulance driver that you saw on the day that you saw this defendant?

A. Yes.

Q. Is he here now, do you know?

Mr. Barnes: I object to that as immaterial.

The Court: Sustained.

By Mr. Clark:

Q. Now, your summer heat there extends up to about the [fol. 765] first week in September, doesn't it?

A. What?

Q. I say, your summer heat there continues up to about the first week of September, doesn't it?

A. Yes.

Q. After that there is usually a sharp drop in temperature, is there not?

A. Yes.

Q. By the latter part of September the weather is getting pretty sharp, that is true, isn't it?

A. Yes.

Mr. Clark: This question may be, or seem to be irrelevant, your Honor. Its relevancy will appear in a minute.

Q. Is there a good deal of Poison Oak, or Poison Ivy through there?

A. I never seen any.

Q. Nothing that makes big patches of color through those mountains?

A. There is some shrubbery there above timberline.

Q. And Colorado Springs is a place known to you to have a good many people who go there to spend the summers, isn't it?

A. Yes.

Q. And you have a good many people come up to Glenn Cove to spend the summers, don't you?

A. No, not to spend the summer.

[fol. 766] Q. Well, to spend some parts of it?

A. Part of a day.

Q. Now, a large number of those people make use of this road for the purpose of going to the summit of Pike's Peak, is that not true?

A. Yes, if they want to go up by car they will have to use that road.

Q. And a large number of them do want to go by car?

A. Yes, sir.

Q. So that during the busy season there is quite a string of automobiles going up and down that road, that is true, is it not?

A. Yes sir.

Q. It is also true that accidents were, during 1932, a quite frequent occurrence there, were they not?

A. I don't understand that one?

Q. Well, in the course of the driving on this road a good many accidents occurred in 1932, didn't they?

A. Two, to my knowledge.

Q. Do you mean two including this?

A. No, just one with that one.

Q. One besides this one?

A. Yes.

Q. Those are all that came to your attention?

A. That is all.

Q. Now, I am approximately correct in my understanding [fol. 767] that Glenn Cove is about 1500 miles from here, isn't it?

A. Well, I really don't know.

Q. You traveled some little time to get here, didn't you?

A. Yes.

Q. You came here on business, didn't you?

A. Yes.

Q. The only business that you had here was to testify in this case, wasn't it.

A. That is all I know of.

Q. You were hired to come, were you not?

A. I was asked to come, yes.

Q. Well, you were promised pay for coming and testifying weren't you?

A. Well, I look for them to take care of my expenses, yes.

Q. You say you look for them to take care of your expenses. In fact, you were promised money if you would come out here and give testimony that would help the prosecution, weren't you?

A. No, they asked me if I could come. I told the man that

asked me to see the general manager and see if I could get off.

Q. Before you told him to see the general manager, or when you told him, you had been promised more money if you would come than you were earning there, hadn't you?

A. No.

[fol. 768] Q. You have received money for coming here, haven't you?

A. Yes.

Q. And you expect to receive more?

A. Yes.

Q. Now, Glenn Cove is quite a bit farther north than Los Angeles, isn't it? Of course, it is a great deal farther east, too.

A. Yes, I guess it is a little farther north.

Q. Your summer evenings there are very much longer than they are here, aren't they?

A. I don't know. I wasn't out here very long, to find out.

Q. You haven't been out here long enough to find out how long our evenings are? Well, your sun goes down quite slowly there, doesn't it?

A. Yes.

Q. Your sun, however, goes behind the summits quite a while before the sunlight fades from the valley, isn't that true?

A. Yes.

Q. So that one standing up there long after the shadows have covered the side of the mountains can look off to the east and see the sun shining brightly over the eastern part of the valley, isn't that true?

A. Sometimes, yes.

The Court: Do you mean the eastern part, Mr. Clark?

[fol. 769] Mr. Clark: I mean as the sun gets nearer down, the shadows lengthen, and the western part of the valley will be covered by shadows, while the sun will be shining brightly over out to the east.

The Court: Oh, I thought you meant the sun, itself. Pardon me.

Mr. Clark: I can see that your Honor was not raised in Colorado.

The Court: I was just assuming that the sun set in the west in Colorado, the same as it does in California.

Mr. Clark: It doesn't, your Honor. It protests vigorously. A great many people stopped up there on the mountains, don't they, for the purpose of watching the shadows as they creep eastward over the valley at sunset?

A. Yes.

Q. They take fieldglasses along to use for that, don't they?

A. I suppose so; I don't know.

Q. Haven't you seen them?

A. I have seen them with them; some didn't. What they were for, I never asked them.

Q. Now, on the occasion that you first saw the defendant on the day in September, what day did you say that was?

A. The 21st, as far as I recollect.

Q. What day of the week was it?

A. Well, now, I don't know what day of the week it was. [fol. 770] I would have to go back to the calendar to find that out.

Q. Did you make any written memorandum of the date at the time the accident occurred?

A. Yes.

Q. And have you referred to your written memorandum since for the purpose of refreshing your recollection as to the date?

A. No.

Q. Did you keep a record of the date of all of the accidents that were reported on that road?

A. Yes.

Q. Have you recently had that record under your observation?

A. Yes.

Q. I suppose that the proprietors of the road maintained some place of business at Glenn Cove, did they not?

A. Do you mean the owners of the road?

Q. Yes.

A. No.

Q. At what place at Glenn Cove were you when you first saw the defendant?

A. In the bunkhouse.

Q. He was by himself when you first came there?

A. No, he was in the house when I seen him, and there were six or eight men working there, sitting around.

Q. And he was talking to those men when you first came in?

[fol. 771] A. Yes.

Q. After you came in, the conversation continued with you?

A. Very little conversation, because the man told me that this woman——

Q. Well, the part that you have testified to occurred then, didn't it?

A. What?

Q. I say the part of the conversation that you have testified to occurred then, didn't it, after you came in?

A. Yes, after I seen them I asked them.

Q. Who are the other men that were there when you first saw him?

A. Well, there are some of them still living back there, and some of them I don't know where you would find them.

Q. Well, give me the names of as many as you can remember?

A. There was Ed Callehar, Dan Callehar, Harry Mitchell. Now, that is all the names that I can mind of there.

Q. Well, did any of these men go up with you to where the car was off the road?

A. Yes, sir.

Q. Which ones went with you?

A. Three of them went with me.

Q. The three that you have just named?

A. Yes, sir.

Q. And there were some who were there at the bunkhouse [fol. 772] when you first entered it and found the defendant, whose names you can't now recall? That is correct, is it?

A. Yes.

Q. But none of them went with you up to where the car was?

A. All the men that were working for me went up there.

Q. These three that you have named are all, are they?

A. No, there were four or five more went up there.

Q. You can't remember the names of any of them?

A. No, not right off hand, because I had laid off some men a few days before.

Q. Now, as I understand it, there was altogether a party of eight or nine of you, besides the defendant, is that right?

A. Yes.

Q. Now, how was the defendant dressed on that occasion?

A. Well, he was dressed in some kind of light suit. It wasn't dark; gray, or some such.

Q. Was it striped?

A. Well, it might be; I wouldn't want to swear to that.

Q. Might it have been checked?

A. It might have been, yes.

Q. Are you sure it wasn't khaki?

A. No, I don't think it was khaki.

Q. Was he in his shirt sleeves?

A. No, he had his coat on.

[fol. 773] Q. Did he have an overcoat?

A. No.

Q. Was he wearing a vest?

A. I could't say whether he was, or not.

Q. You observed no wounds, cuts or abrasions upon him?

A. No.

Q. Did you see him walk?

A. Yes.

Q. Did he walk with a limp?

A. No, not that I seen.

Q. Did you observe his clothing for the purpose of seeing whether there was any blood stains on it, or not?

A. I didn't see no blood on his clothes, no.

Q. Did you look for any?

A. No.

Q. Now, directing your attention to your diagram here for a moment, Glenn Cove lies in a general southeasterly direction from the summit of the Peak, does it not?

A. Yes, I believe you would call that southeast.

Q. And the drawing that you have made, is the top of it intended to represent the summit of the Peak? In other words, you are traveling downhill as to go from the upper part of this diagram to the lower part, is that correct?

A. Yes.

Q. And when you finally got up there you found this car on the right-hand side of the road facing downward. That [fol. 774] is correct, isn't it?

A. Yes.

Q. You forgot about that when you first took the witness stand, didn't you?

A. No, I don't know that I did. Is this what you are referring to here?

Q. You first placed a cross on the diagram to indicate the position of this car, didn't you?

A. Yes.

Q. And when you first put the cross upon the diagram

you put it upon the right-hand side of the road as you go down that road, didn't you?

A. Yes.

Q. It was after Mr. Barnes corrected you that you remembered that you first saw the car on the left-hand side of the road; that is correct, isn't it?

A. Yes.

Q. Now, that road is built along a side hill, isn't it?

A. Yes.

Q. And on the left-hand side as you go down is the side of the mountain sloping above the road, isn't that true—or, on the right-hand side—yes, on the left-hand side as you go down?

A. Do you mean the side of the road that is cut into the side of the hill?

A. Yes, sir. I am confused myself. Let me straighten [fo'. 775] myself out a moment. Yes, as you go down that mountainside, going toward Glenn Cove, the mountain falls away on your left and rises toward the summit on your right, isn't that true?

A. Yes, for some ways.

Q. Now, when you saw this car was it below the road, or above the road?

A. The car was above me.

Q. Well, I mean was it below the road it had been traveling on? It didn't run up hill, did it?

A. No.

Q. It ran downhill, didn't it?

A. Yes, sir.

Q. Was the car still standing, or was it overturned?

A. The car was standing, yes.

The Court: I think we had better take our recess, Mr. Clark. The jury will heed the admonition heretofore given. We will take a short recess.

(Recess.)

The Court: You may remain seated, please.

Mr. Barnes: Mr. Rogers.

The Court: Let the record show all parties present. You may proceed.

By Mr. Clark:

Q. Now, Mr. Rogers, when you put the first cross on your drawing there, you were momentarily mistaken as to the location of the car?

A. No, I was not mistaken, because in the drawing of this [fol. 776] picture here, I thought I was on the correct side of the road, but I was not.

Q. All right.

A. I was standing down below.

Q. But when you got up there, how far out of the track was the car?

A. How far up the road, is that what you mean?

Q. Yes.

A. About 150 feet.

Q. Was the car standing practically parallel to the road, or was it turned at some angle?

A. The car came straight down off of this road, and was headed downhill.

Q. The front of the car was headed down hill?

A. Yes, sir.

Q. And the car was standing about 150 feet away from it?

A. Did I understand you to say that the car was standing alongside the road?

Q. Yes.

A. The car was standing 150 feet away.

Q. And the front end of the car was about the same distance from the road as the rear end?

A. No, not quite. The lengths of cars are different. The front of the car was farthest away.

Q. Then the car was standing at pretty near right angles to the road, is that right?

[fol. 777] A. Right angles?

Q. Yes.

A. Coming down the road, the car went off to the left.

Q. I understand it went off to the left, but, Mr. Rogers—may I have the pointer?

Mr. Barnes: Right here.

By Mr. Clark:

Q. I don't want to confuse you. Let me assume then for a moment, Mr. Rogers, that that pointer is the road, and that this pencil is the car. Now, did the car stand something like that, or like this, or how?

A. Like this, (indicating). Now, this is the front of the car.

Q. Yes.

A. And this is the back of the car. That is the way it was. This is your right.

Q. Indicating the car at right angles to the roadside?

A. Yes.

Q. You were driving the truck on the way up, were you not?

A. Yes.

Q. And the other members of the party were seated, some of them in the seat, and some others in the back?

A. There were two of them in the back of the truck.

Q. Two in the back?

A. Yes, two in the back.

Q. And two in the seat?

[fol. 778] A. Yes, there were two in the seat, and there was another truck came up behind with the rest of the men.

Q. I see. About how far down the road from the car was it that you stopped?

A. You mean where I came out of the truck?

Q. Where you stopped your car?

A. That was above the car, when I stopped the truck. Now, I mean by that the car was off the road. I was on this road up here.

Q. About how far above the road would you say you went with your truck, altogether?

A. I stopped right here with the truck. Now, the car was down here.

Mr. Barnes: Now, may I suggest that the jury cannot see where the witness is pointing.

By Mr. Clark:

Q. Now, you say "I stopped up here". You are indicating a place on the diagram where a line has been drawn across the open space?

Mr. Barnes: That is an Arabical numeral "1", and it was directed put there by the Court during the direct examination.

By Mr. Clark:

Q. Now, did you proceed any farther up the road with your truck?

A. No, not until this woman was sent to the hospital.

Q. Now, the other one stopped a little farther down the road?

[fol. 779] A. Which one?

Q. The other truck.

A. Yes.

Q. And the men who accompanied you got out of the truck and busied themselves around the scene of the accident, is that right?

A. Yes, they followed him down.

Q. You don't mean to tell us that all the men stayed together there, do you?

A. Yes.

Q. The men separated some, didn't they?

A. I suppose they did.

Q. What?

A. I suppose they did.

Q. You, yourself, went immediately to the place where Mrs. James was lying?

A. Yes.

Q. And some of the men with you?

A. Yes, sir.

Q. And she was lying, as I understand, with her feet on the running board of the car?

A. Yes, one or more. I don't know whether both feet were on the running board, or not. I couldn't swear to that.

Q. Was she lying upon her back?

A. Yes.

[fol. 780] Q. Anything at all placed over any portion of her body?

A. No, I didn't see anything over her.

Q. How was she dressed?

A. She had on a pair of riding pants, and a pair of boots, I think that was what there was.

Q. Did she have a hat on her head?

A. Not then, no.

Q. You mean that something was placed on her head later?

A. What?

Q. You mean that something was placed on her head later?

A. I put a blanket about her, is all.

Q. What was the condition of the car when you first saw it?

A. It had a broken wheel.

Q. Which wheel?

A. The left wheel.

Q. Was that the left front wheel, or the rear left wheel?

A. The left front wheel.

Q. How was the body?

A. The windshield was shattered.

Q. How about the sides of the car?

A. Well, I didn't pay much attention to the sides of the car right then. They seemed to be all right. I don't know whether the car was—I didn't go into the details of the car to find out how bad it was broke up.

Q. Didn't you see the one side of the car caved in?

[fol. 781] A. The one side of the car caved in?

Q. Yes.

A. There might be a dent in the side of the car; there might be.

Q. You didn't examine the car close enough to know whether that was true, or not?

A. What was true?

Q. That one side of the car was caved in?

A. No, I didn't examine the car that close.

Q. What kind of wheels did this car have?

A. I couldn't state as to that, whether they were wire wheels, or wood spokes; I don't know.

Q. What make of car was it?

A. Studebaker.

Q. Did you notice what year model?

A. No, I didn't.

Q. Did you ascertain the license number?

A. What?

Q. Did you ascertain the license number?

A. No.

Q. Now, when you were up there, as I understand, you saw some blood stains on the car?

A. Yes, sir.

Q. And you asked the defendant how they came there?

A. No.

Q. Did you ask him what he was doing with the hammer?

[fol. 782] A. No.

Q. Did you observe the tires, to see whether there had been any recent puncture repairs?

A. They were in pretty bad shape after the car was taken back to the road, I know.

Q. As a matter of fact, you saw where a puncture had just been repaired in one of those tires, when you first examined it, didn't you?

A. No, I didn't.

Q. When you got there where the car was it was pretty dark, wasn't it?

A. Yes, it was dark.

Q. What kind of lights did you make your examination with?

A. The lights of the trucks.

Q. And the nearest of those trucks was how far from the car?

A. 150 feet.

Q. With what kind of light was your truck equipped?

A. The regular truck lights.

Q. How long were you there altogether?

A. Well, I was there from when I seen this woman loaded into the ambulance until 6:00 o'clock the next morning.

Q. You were there until 6:00 o'clock the next morning?

A. Yes.

Q. Did you make any examination the next morning?

[fol. 783] A. What?

Q. Did you make any examination the next morning?

A. No, because I used a caterpillar to pull this car back with. I examine'd the switch-back; before I let anything go on the switch-back after that I used the caterpillar to pull the car up with.

Q. Coming back to the day of the accident, when you reached the place where Mrs. James was lying, you immediately busied yourself in trying to render what assistance you could to her, didn't you?

A. Yes, sir.

Q. Some of the men helped you there with that, didn't they?

A. Yes.

Q. You tried to get her into the car, didn't you?

A. What?

Q. Withdraw the question. Some of the men, I said, helped you there? I followed that by asking you didn't all of the men help you with Mrs. James? They did, didn't they?

A. Well, all of them on their turn. They couldn't all get around at the same time.

Q. How many of them were trying to help you render assistance to Mrs. James during the first few minutes you were there?

A. There were four of them.

Q. What were the others doing?

[fol. 784] A. They were standing behind.

Q. All of them standing in a group?

A. They were all around there, yes.

Q. Did any of them leave that group, so far as you know?

A. Not as far as I know.

Q. Isn't it true that one of them stood with Mr. James at some distance from where the wife was?

A. I didn't know that.

Q. Isn't it true that one of them went there and saw the conditions, and became sick, nauseated, and had to leave?

A. Not that I know of.

Q. Isn't it a fact that one of those men stayed with Mr. James up there, and he and Mr. James didn't approach the car closer than a distance of 150 feet?

A. When I seen Mr. James after I went down to this woman, he was probably 25 feet away from the car.

Q. When was that?

A. That was when I went down, came out of the truck, and went down to see this woman, to see how badly she was hurt.

Q. That was immediately upon your arrival?

A. Yes.

Q. Had Mr. James been riding in the truck with you?

A. Yes.

Q. In the seat with you?

A. Yes.

Q. He got out when you did?

[fol. 785] A. Yes.

Q. You went right straight to the scene of the accident?

A. Yes.

Q. Mr. James went right along in the same direction, did he?

A. I think so. I didn't wait to see what he was doing.

Q. Did you hear Mr. James complain of any injuries at the time?

A. He moaned a few times on the way up there.

Q. Did he make any statement as to where he was hurt?

A. No.

Q. Did you notice Mr. James' face?

A. Yes, I did.

Q. Was it pale, or flushed?

A. It didn't seem to be. He seemed to be carrying himself normal.

[fol. 786] Q. About how long was it after you reached there before the ambulance arrived?

A. Well, it would probably be an hour, probably an hour and a half; I wouldn't swear to the exact time of that; I don't know.

Q. Did you stay right there at the car until the ambulance arrived?

A. We carried this woman out to the road.

Q. How many of you carried her out?

A. There were four men carrying her.

Q. At the time she was carried out to the road, was there anyone at all left around the car?

A. No.

Q. While the four men carried her out to the road, what were the others doing?

A. They were changing off. There were four men took turns carrying her.

Q. You took turns carrying her?

A. Yes.

Q. Altogether you carried her a distance of 150 or 200 feet?

A. Probably 200 or a little over.

Q. And that was done within a few minutes after your arrival there?

A. Yes, as quick as we could.

Q. When you got up to the road you looked into the car [fol. 787] for something to wrap her in, didn't you?

A. Yes.

Q. You found some blankets there?

A. Yes.

Q. Had you seen any of those blankets outside of the car?

A. No.

Q. Did you notice whether any of those blankets were bloody or not?

A. No, I did not.

Q. Were the blankets mussed up or folded naturally?

A. The one that I got was lying on the seat.

Q. Folded or just thrown there?

A. Just thrown on the seat.

Q. Was she covered with the blanket immediately upon your getting there?

A. Yes.

Q. And at that time she was stretched out on the ground, I take it?

A. Yes.

Q. Nothing under her except the ground?

A. That is right.

Q. Did anyone stay there to watch her?

A. While he was going after me, is that what you mean?

Q. No, I mean while you were waiting for the ambulance, after you got her up there?

[fol. 788] A. We all stayed there right with her.

Q. And nobody left the group at all?

A. Not that I know of.

Q. During all of this time your attention was principally directed to her body and the car, wasn't it, to her person and to the car?

A. To her, yes.

Q. You weren't paying any particular attention to where any men were or what they were doing, except when they were helping you, were you?

A. No.

Q. The examination that you made up the road, did you make that night or the next morning?

A. That night.

Q. What time that night?

A. Immediately after the ambulance left there.

Q. It was around 10 o'clock when the ambulance left there, wasn't it?

A. Well, somewhere around; I don't know how late it was; I couldn't say that for sure.

Q. Was that a moonlight night?

A. Yes, there was a moon, not very bright.

Q. Did you ask this defendant whether he made those tracks or not?

A. No.

Q. Did you measure or cause any of the tracks to be [fol. 789] measured?

A. No.

Q. Did you ascertain what size shoe the defendant wears?

A. No.

Q. There had been a good deal of traffic on that road during the past summer, had there not?

A. Yes, quite a little.

Q. The road was quite dusty, wasn't it?

A. Yes, there was some dust on the road, yes.

Q. You wouldn't say the dust was uniform, however, would you?

A. Well, I wouldn't want to swear to that, no.

Q. There were some places where the road was hard enough so that it wouldn't retain a footprint, wasn't there?

A. Yes.

Q. The footprints that you did see, they went right along the dusty part of the road, didn't they?

A. Yes.

Q. And the dusty part of the road was the wheel tracks wasn't it?

A. Yes.

Q. Had the fall storms commenced?

A. What?

Q. Had the fall storms commenced?

A. Do you mean was it raining then?

Q. Yes.

[fol. 790] A. No.

Q. Snowing?

A. No.

Q. Any storms on at that time?

A. No, not right then.

Q. Do you know of any snow being on the road that day at all?

A. No.

Q. Those mountains all through there are rocky, are they not?

A. Yes, they are rocky.

Q. Quite a considerable number of small stones are there?

A. In some places.

Q. There are some slanting slabs of rock of considerable size, are there not?

A. Yes.

Q. And pieces have broken off of them in various sizes that are found both above and below the road haven't they?

A. Yes.

Q. Did you comment to the defendant upon the bruised spot that you found on Mrs. James' head?

A. Did I? What? I don't understand you.

Q. Let me withdraw the question. Did you speak to the defendant about finding a bruised spot on the woman's head?

A. No.

Q. Did you speak to the ambulance driver about that?
[fol. 791] A. No.

Q. Did you tell anybody about that?

A. No.

Q. Did you report that bruised spot to the sheriff of that county or any peace officer there?

A. No. I made a report to the general manager that I was working for.

Q. You made a report to the company?

A. Yes.

Q. You did that in all cases of accident?

A. Yes.

Q. This case just the same as the others?

A. Just the same as the rest.

Q. And after that you gave the matter no more thought until the investigators from the District Attorney's office came?

A. That is all.

Q. Of course, the report that you made was in writing?

A. Yes.

Q. You haven't it with you?

A. No, I have not.

Q. There is no copy in the State of California, so far as you know?

A. I don't know.

Q. Well, in making that report, you simply reported to the inspector that there was an accident, didn't you?

[fol. 792] A. I reported to the company, yes.

Q. And the report you made to the company was that an accident had occurred at that time and place?

A. Yes.

Mr. Clark: I think that is all.

Redirect examination.

By Mr. Barnes:

Q. With respect to the compensation that you have received or expect to receive, Mr. Rogers, coming here from Colorado, are you expecting to receive or have you received any bonus for coming here, or has it just been the expenses that have been paid and the amount of money lost from your work?

Mr. Clark: Just a moment. I think that is improper re-direct examination. My objection goes to the use of the word "bonus". I do object to that as being incompetent, irrelevant and immaterial, and not redirect examination.

The Court: You don't mean the word "bonus" as used would be anything objectionable.

Mr. Clark: I think it would be leading.

The Court: I think it would be a gift. The question is not improper.

Mr. Clark: Very well.

The Court: You may answer. Read the question, Mr. Reporter.

[fol. 793] (Question read by the reporter.)

A. That is all. The expense and the money that I lose.

Q. By that I take it you mean you do not receive and have not received anything but your actual traveling and living expenses, and the amount of money that you are actually out by not working?

A. That is all.

Q. Prior to the time that any arrangements were made for you to come, did you tell what you have testified to here to Captain Jack Southard of the District Attorney's office?

Mr. Clark: Just a moment; that is objected to as incompetent and calls for hearsay evidence, and the character of it can be fabricated.

The Court: If there is any suggestion that there was a recent fabrication, I think you should rebut it on your examination. The objection is overruled.

A. What was that?

Mr. Barnes: Will you read that, Mr. Reporter?

(Question read by the reporter.)

A. Yes.

Mr. Barnes: That is all.

Recross-examination.

By Mr. Clark:

Q. That is the person you did tell it to then, isn't it?

A. Yes.

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[fol. 794] Mr. Barnes: Miss Grace Yarnell.

MISS GRACE YARNELL, called as a witness in behalf of the People, being first duly sworn, testified as follows:

The Clerk: State your name, please.

The Witness: Grace Yarnell.

Direct examination.

By Mr. Barnes:

Q. Mrs. Yarnell, where do you live?

A. Colorado Springs, Colorado.

Q. Were you living there in September and October of 1932?

A. Yes, sir.

Q. Do you know Mr. Robert S. James, this defendant?

A. I met him at that time.

Q. Did you know Mrs. James at that time?

A. Yes.

Q. Otherwise known as Nona Wallace, prior to her marriage?

A. Yes, sir.

Q. Was she a relation of yours?

A. Yes.

[fol. 795] Q. What was the relationship?

A. Cousin.

Q. I show you here a photograph, Mrs. Yarnell, which I will ask to have marked as People's Exhibit 49. Is that the number?

The Court: Yes, 49 is the next number.

By Mr. Barnes:

Q. And I call your attention to two persons shown in the center and the rear of the photograph standing in the back row, above whose heads there is a circular line with an arrow on each end of the line. Do you recognize the persons shown in that photograph?

A. Yes, sir.

Q. Who are they?

A. One is Winona James and Robert S. James.

Q. Will you indicate those two with a pencil to me there?

A. Yes, sir (indicating on photograph).

Mr. Barnes: May I mark in some way the two indicated by the witness?

The Court: Do you want to encircle them in some way?

Mr. Barnes: Yes, if I may, please. May we have the record show that I am drawing a pen and ink circle around the two identified by the witness?

Q. Now, I will show you this again after I have drawn this circle. Those are the two that are now enclosed in the pen and ink circle?

A. They are.

[fol. 796] Q. Did you see Mr. James and his wife, Winona James in Colorado in September, 1932?

Mr. Clark: That is objected to upon the ground that it is immaterial and irrelevant.

The Court: Overruled.

A. Yes, I did.

By Mr. Barnes:

Q. And were you familiar with the incident where Mrs. James went to the hospital?

Mr. Clark: Now, that is objected to upon the ground that it assumes facts not in evidence and is immaterial, irrelevant and incompetent and incompetent to any issue in this case.

The Court: I think it does assume one fact not in evidence. The objection is sustained.

By Mr. Barnes:

Q. Did you see Winona Wallace James in a hospital?

Mr. Clark: What was that?

Mr. Barnes: Did you see Winona Wallace James in a hospital.

Mr. Clark: That is objected to on the ground that it is irrelevant to all the issues of this case and is incompetent.

The Court: Overruled; you may answer.

A. Yes, sir.

By Mr. Barnes:

Q. When was that?

Mr. Clark: The same objection last stated.

The Court: The same ruling. You may answer.

A. It was on the 21st of September, 1932.

[fol. 797] The Court: Just speak a little bit louder, please.

By Mr. Barnes:

Q. What hospital was it?

Mr. Clark: The same objection.

The Court: The same ruling. You may answer.

A. It was Bethel-El Hospital.

By Mr. Barnes:

Q. It was the Bethel-El, that is hyphenated B-e-t-h-e-l-L, or just B-e-t-h-e-l-E-l?

A. It is the Bethel-El Hospital.

Q. Did you visit her during the time she was in the hospital from time to time?

Mr. Clark: That is objected to on the ground that it is incompetent, irrelevant and immaterial.

The Court: It may be preliminary; overruled.

A. Yes, I did.

By Mr. Barnes:

Q. How long a period was it that she was in the hospital?

Mr. Clark: That is objected to as incompetent, irrelevant and immaterial.

The Court: Overruled; you may answer.

A. She was there from the 21st of September to the 8th of October.

By Mr. Barnes:

Q. During that period of time, did you see her frequently, or infrequently?

Mr. Clark: That is objected to upon the ground that it is incompetent.

The Court: Overruled.

[fol. 798] A. I believe I saw her every day.

Mr. Clark: If you will pardon me just a moment. Will it be necessary for me to repeat the objections that I have made as immaterial and incompetent to the making of every question?

The Court: No, I will assume that your objection is made and it will be understood, unless otherwise shown, that the Court overrules your objection.

By Mr. Barnes:

Q. Did you see any bandages on or about her?

A. Yes, sir.

Q. Where?

A. On her head.

Q. Did you see her head after the bandages had been removed at any time before death?

A. Yes, I did.

Q. Did you see any wounds about the head?

A. Yes.

Q. Where?

A. One was over the right eye and a cut across the nose, and a place under her hair, in the back of her ear.

Q. During the time that you saw Mrs. James in the hospital, did you ever see her get out of bed and walk?

A. Yes, I did.

Q. After she returned—after she left the hospital, at what place did you see her?

A. At her cottage in Manitou.

[fol. 799] Q. Manitou is about how far from where the Bethel-El Hospital was?

A. Probably eight miles or nine miles.

Q. Another little town near that place, is it?

A. Yes, sir.

Q. The Bethel-El Hospital is in Colorado Springs?

A. Yes, sir.

Q. Do you know the day that she went to live in Manitou, what day it was?

A. It was the 8th of October.

Q. The 8th of October?

A. Yes, sir.

Q. Between the 8th of October and the 14th of October, did you see her in her home in Manitou?

A. Yes, I did.

Q. How many times approximately?

A. Every day but one.

Q. And which day was it that you missed?

A. The day prior to her death.

Q. Did you see her out of bed on any occasion when you visited her at her home?

A. No.

Q. Was she sitting up or lying down?

A. Sitting up.

Q. On any occasion when you saw her at the home, did she ever complain of dizzy spells or say that she had at [fol. 800] that time any spell of dizziness?

Mr. Clark: Just one moment. That is objected to as hearsay, and incompetent.

The Court: The form in which the question is put, that is rather difficult. I don't know what the answer might be as to whether we could consider the rule of hearsay or have the witness answer within the rule of involuntary explanation. In the absence of the showing I am going to sustain the objection.

By Mr. Barnes:

Q. Did Mrs. James have, while you were talking to her, say anything to indicate to you that she was then happy at the time of the talking, or did she have any spell of dizziness or——

The Court: That is objectionable as calling for a conclusion by the witness, Mr. Barnes. I think the testimony would have to be limited as to the appearance, as to whether or not Mrs. James appeared to be that way.

By Mr. Barnes:

Q. Did Mrs. James ever do anything in your presence indicating to you that she was then dizzy?

Mr. Clark: That is objected to upon the ground that it is incompetent, irrelevant and immaterial.

The Court: Sustained. It calls for the witness' interpretation of what she saw.

By Mr. Barnes:

Q. Well, did she appear to be dizzy on any occasion when you saw her?

A. No, she did not.

[fols. 801-803] Q. Did she appear to be fainting on any occasion when you saw her?

A. No, sir.

Q. Did you see her after she had passed away?

A. Yes.

Q. Where did you see her?

A. I saw her that night in her home, and I saw her later in the mortuary.

Q. Now, during the time that Mrs. James was in the hospital, were you ever with Mrs. James alone?

A. Yes, sir.

Q. On any of those occasions did Mr. James ever make any advances to you?

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[fol. 804] Mr. Barnes: Did you see Mr. Robert James in the hospital, himself, in any room, during September, 1932?

A. Yes, I saw him on that first morning that I went out there.

Q. Was he in some hospital room?

A. He met us in the hall outside of Winona's room.

Q. He was up walking around then, was he?

A. Yes, he was.

Q. At any time did you write a letter after the death of Mrs. Winona James for the defendant?

A. Yes, I did.

Q. Did you have any conversation with the defendant, or [fol. 805] were you present when any one else did, with respect to the subject matter of whether or not the defendant had money, or didn't have money?

A. Well, yes, he said that he didn't have any money.

Q. He told that to you?

A. Yes.

.

Mr. Clark: If your Honor please, I asked that the Court continue in session for a moment for this reason: It has always been my custom, when it seemed probable that a continuance might be necessary, to advise opposing counsel of that necessity at the earliest possible moment. I do that for the purpose of affording the other side ample opportunity in the event a continuance is needed, to prepare to meet the showing made for a continuance. I am advised

that with sufficient time we can rebut a substantial portion of the testimony that has been introduced here today by the [fol. 806 807] witnesses, by witnesses outside of this State. If I had had any information that evidence of this character was going to be offered at the time we were taking depositions, it would have been very slight inconvenience to come past Colorado and have taken the depositions there. I wasn't informed. This is not an application for a continuance; it is simply advising counsel that application will probably arise. When the application is made, it will, of course, be made upon affidavit setting forth the evidence that we expect by means of a continuance to produce, and showing why it could not have been produced at an earlier time. I think that is all that I wish to say at this time.

* * * * *

[fol. 808] GRACE YARNELL, recalled as a witness in behalf of the People, and testified as follows:

The Court: You may proceed.

Mr. Clark: If your Honor please, Mr. Barnes asked the question yesterday evening, and at my request he deferred asking for an answer for that until this morning. I am satisfied to stand on my objection without a further statement of objection.

The Court: Objection overruled.

Mr. Barnes: I will give you the context, read you one of the answers that preceded it on page 801. I had been asking you about Mrs. Winona James and then I asked you: "Now, during that time that Mrs. James was in the hospital, were you ever with Mr. James alone."

The Court: In the transcript, "With Mrs. James."

Mr. Barnes: "Mrs. James", here in the transcript, but it is my recollection that I said, "Mr. James".

Mr. Clark: Page 801, your Honor, lines 9 and 10.

[fol. 809] Mr. Barnes: And then in line 13 the word "defense" should be "advance".

The Court: I have been looking for my personal notes. The transcript on page 801, which now reads, "Mrs. James" is now amended to read "Mr. James", on lines 9 and 10.

Mr. Barnes: And then the words on line 13 of page 801, should be "any advance".

The Court: The word, "defense" will be stricken and the word "advance" inserted instead.

Mr. Barnes: The question therefore will be, Miss Yarnell, "Now, during the time that Mrs. James was in the hospital were you ever with Mr. James alone?" to which you answered, "Yes, sir. Q—On any of those occasions did Mr. James ever make any advance to you? Will you answer that?"

Direct examination (Continued):

A. Not excepting a couple of kisses.

Mr. Parsons: What was the answer? We can't hear a word the witness says.

Mr. Barnes: "Not with the exception of a couple of kisses."

Q. When was the first time that he kissed you, Miss Yarnell?

Mr. Clark: Of course, it is understood our objection goes—

The Court: The objection goes to the entire subject matter and the ruling rides with the entire subject matter.

A. I believe it was one afternoon when we were going [fol. 816] somewhere in a car.

Mr. Barnes: I may say to the Court that the witness informed me before she testified that she has a great difficulty at all times in raising her voice, due to some peculiarity of speaking.

The Court: Do the best you can, please.

Mr. Barnes: Miss Yarnell, do the best you can and speak as loud as possible, because as you have observed, it is very hard to hear in this courtroom. How long was that approximately after Mrs. James had been sent to the hospital?

A. Oh, three or four days, I believe.

Q. Was anyone in the automobile beside you and Mr. James at the time that he kissed you on that occasion?

A. No.

Q. And what did you do when he did that?

A. I just moved over out of the way, on the other side of the car.

Q. When was the next occasion that he kissed you?

A. I believe that time we were also in the car, going somewhere.

Q. About how much later was it after the first kiss?

A. A couple of days.

Q. And just you and Mr. James alone on that occasion?

A. Yes.

Q. Did he kiss you or attempt to kiss you on any other [fol. 811] occasion?

A. Once.

Q. Where?

A. In a room at the hotel.

Q. That is the hotel where he was living at that time?

A. Yes.

Q. What was the name of the hotel? I didn't get it.

A. I believe it was the Elk at that time.

Q. What occurred on that occasion?

A. I just told him to cut it out.

Q. Was anyone in the room besides you and Mr. James?

A. No.

Q. Was it his room?

A. Yes.

Q. Yesterday afternoon I showed you a letter—I don't know whether I showed it to you, but I showed it to counsel yesterday afternoon. I show it to you again now, and ask you if you recognize the handwriting upon this letter?

Mr. Clark: Just one moment. I take it it will be deemed that this is subject to our understanding that before any offer is made the original letter will be produced for our inspection?

Mr. Barnes: That is correct.

A. Yes, sir.

Q. Do you recognize the handwriting as shown in this letter that I am now showing you?

[fol. 812] A. Yes.

Q. I see a signature on the last page of the letter did you write that signature there?

A. I did.

[fol. 813] Mr. Barnes: May we have this photostat, which I have been showing the witness, of this letter marked?

The Court: 50 for identification.

Mr. Barnes: Thank you, your Honor.

Q. Did you have any conversation with the defendant about writing the letter shown in the photostat, People's offer 50 for identification?

A. Well, he just asked me to write it for him, and I wrote it.

Q. Did he tell you what to put in the letter.

A. Yes.

Q. He dictated it?

A. Yes.

Q. And after having written the letter, what did you do with it?

Mr. Clark: It is, of course, understood we are still persisting in the general objection made yesterday?

The Court: Yes.

A. I don't remember. I guess it was mailed; I don't know.

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[fol. 814] Ev Mr. Barnes:

Q. Did you have any conversation with Mr. James after the accident, as to how the accident had occurred on Pike's Peak?

A. Yes, we discussed it.

Q. What did he say about it?

Mr. Clark: Just one moment. That is objected to upon the additional ground that it is an attempt to prove the corpus delicti in a murder other than that with which the defendant is charged, by the statements and declarations of the defendant, and that no foundation has been laid for the testimony sought to be elicited.

The Court: The objection will be overruled, with the same [fol. 815] comment that was made with reference to the other conversation offered by the prosecution, referring, of course, to the conversations by the defendant. You may answer.

A. He said that Winona was driving the car, and he was looking out over the side with a pair of field glasses, and he didn't notice anything happening until the car started over. He said the door opened, and he was thrown out as the car went over the side.

Q. Did he say anything about what he did for Mrs. James, to make her comfortable, while he got help?

Mr. Clark: That is objected to—oh, I think that is all covered by the general objection.

The Court: I will make the same ruling.

A. He said that he picked himself up, and went down to where the car was, and picked Winona up. He said one of her feet was tangled in the gear shift, and he picked her up and laid her on the ground, and wrapped her in blankets.

Mr. Barnes:

Q. And left for help?

A. And then went for help.

Mr. Barnes: Cross examine.

Cross-examination.

By Mr. Parsons:

Q. Miss Yarnell, did you state that you were a cousin of Mrs. James?

A. Yes, sir.

[fol. 816] Q. And you saw Mrs. James immediately after the accident at the Bethel Hospital, in Colorado Springs, is that right?

A. The next morning.

Q. And at that time you also saw Mr. James outside of the hospital room?

A. I did.

Q. And when you went in the room, did he go in with you folks?

A. He did.

Q. And prior to seeing Mrs. James at the hospital, you had met Mr. and Mrs. James at your home, had you not?

A. Yes, I had.

Q. They had visited there, had they not?

A. Yes, sir.

Q. That was a day or two before this occurrence?

A. It was on the day of the accident.

Q. They had just arrived from the Coast, had they not, so far as you know?

A. They said that they had arrived the night before.

Q. And they came out to your house to visit, is that right?

A. Yes, sir.

Q. And at the time that you were introduced to Mr. James, and by your cousin, Winona, you people greeted one another by kissing, did you not?

A. Well, Winona, yes.

[fol. 817] What is that?

A. We did Winona.

Q. Did you kiss Mr. James?

A. Not on that occasion.

Q. Not upon that occasion. Now, when you saw Mrs. James at the hospital upon this first occasion, the morning after the accident, she was lying in bed, was she not?

A. Yes, she was.

Q. And her head was covered with bandages, was it not?

A. That is right.

Q. Wrapped up?

A. Yes.

Q. Now, some time after that did you have occasion to see her head uncovered, with the bandages off?

A. Yes.

Q. You did, did you not?

A. Yes.

Q. And you observed that there was a cut over the eye, between the eye and the hair, is that right?

A. Yes.

Q. And there was some blood upon the hair, was there not.

A. Yes, sir.

Q. Quite considerable, was there not?

A. Yes, sir.

Q. Her hair was quite matted with blood, was it not?

A. Yes, it was.

[fol. 818] Q. And you visited the hospital almost daily, did you not?

A. Yes, I did.

Q. And upon your visits there, quite frequently you saw Mr. James, did you not?

A. I did.

Q. And you folks lived in town, but the hospital is a little ways out, isn't it?

A. Yes, sir.

Q. And had you folks all seen her?

A. Off and on.

Q. We will have to have you keep your voice raised.

A. Yes.

Q. From time to time that Mrs. James was confined in the Bethel Hospital, you were inclined to go and take Mr. James out in the car, were you not?

A. Yes, sir.

Q. On many occasions you took him out there, did you not?

A. Yes, sir.

Q. In fact, right up to and including the time she was moved, is that not right?

A. Right.

Q. Now, during the evening you called at the hospital, did you not?

A. Yes, sir.

[fol. 819] Q. You recall the incident when Mrs. James' father arrived?

A. Yes.

Q. What is the answer?

A. Yes, sir.

Q. That was some days after the accident?

A. It was.

Q. And until about the time of his arrival or shortly after his arrival, there had been both a day and a night nurse?

A. I believe so.

Q. And some time after the arrival of Mrs. James' father, the night nurse was discharged, was she not?

A. Yes, sir.

Q. Or at least you didn't see her any more at night when you visited there at night?

A. Well, just came in and out of the room.

Q. And there was a period of time that Mrs. James was in the hospital, that Mr. James spent the night up there, spending the nights with her?

A. I don't know. We always left about eight.

Q. When you left, Mr. James was quite frequently there with his wife?

A. Yes.

Q. And that continued for some time, practically up until the time that she left the hospital, did it not?

A. Yes.

[fol. 820] Q. You were in the habit of leaving early in the evening, along about 7:45 or 8:00 or 8:15?

A. Yes.

Q. And after she left the hospital, you saw Mr. James upon several occasions, did you not?

A. Yes, I did.

Q. And you state that this letter, which has been marked

for identification, No. 50, you wrote that in your handwriting, is that right?

A. That is right.

Q. And Mr. James suggested to you the contents of the letter, is that right?

A. That is right.

Q. He, of course, did not dictate it word for word, did he?

A. No.

Q. He told you what he wanted in there and you wrote it out, isn't that the fact?

A. Yes.

Q. And he doesn't use very good English, does he, he is a man of very little education, as far as you know?

A. As far as I know; I don't know.

Q. Now, this particular letter here, No. 50 for identification, Mrs. Yarnell, this is not the only letter that you wrote for Mr. James, is it?

A. I believe I wrote several personal letters.

[fol. 821] Q. Yes. And you wrote at least some to his folks down in Alabama, did you not, some of his family?

A. I think I wrote one to his sister.

Q. And during the time that you wrote these letters, Mr. James told you he was quite nervous and would like to have you write the letters for him, isn't that true?

A. Yes, sir.

Q. And upon one occasion, he asked you if you would be kind enough to write a telegram for him, which you did, did you not?

A. Yes.

Q. Yes. Now, after Mrs. James had passed away, he left with her body, did he not?

A. Yes.

Q. He left on the same train, the train that was carrying her body, did he not?

A. Yes, I believe so.

Q. Well now, didn't you go down to the train to see him off?

A. I think we did, yes.

Q. Yes. And when you were down at the train to see him off, he thanked you for your many aids to him, did he not?

A. Yes.

Q. And did he give you some little expense money or some of the money that you had spent in the running around that you had done for him, don't you recall that?

[fol. 822] A. I believe he did.

Q. And he kissed you goodbye, didn't he, and told you you had been awfully nice to him in his trouble?

A. Yes, sir.

Q. And after that occurred, you came out here to California some time later, did you not?

A. Yes, sir.

Q. And one of the first persons whom you looked up out here in California was Mr. James, was it not?

A. No.

Q. Well, you did, however, see him?

A. Several months after.

Q. You went to see him, did you not?

A. No, he came over to the home of my aunt.

Q. Did you ever drop into the barber shop and see him?

A. He wasn't in the barber shop.

Q. And did you tell him that you were looking for employment?

A. No.

Q. You didn't discuss that with him?

A. No, sir.

Q. How long were you here?

A. I was here from the 18th of January until the 15th of July.

Q. And during that time you did seek some employment, did you not?

[fol. 823] Mr. Barnes: We submit that is not preliminary.

Mr. Parsons: Yes, that is preliminary.

The Court: It may be answered.

A. I went to school while I was here.

By Mr. Parsons:

Q. You are a stenographer, are you not?

A. Yes, sir.

Q. And isn't it a fact, that upon one occasion, you asked Mr. James, if by reason of the fact that he was operating a barber shop, operating a barber shop down town, if he didn't meet a lot of business men and that he could advise them to become interested in your behalf and attempt to get you some employment?

A. No.

[fol. 824] Q. Now, did you discuss that subject at all?

A. I said that if I could find a job out here, that I would like to stay out here.

Q. You did tell that to Mr. James, at least?

A. Yes, sir.

Mr. Parsons: That is all.

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GERALD ROGERS, called as a witness in behalf of the People, being first duly sworn, testified as follows:

The Clerk: State your name, please.

A. Gerald Rogers.

Direct examination.

By Mr. Barnes:

Q. Mr. Rogers, your voice is quite soft, and will you use a little bit more power than you ordinarily use in talking, and talk a little louder, so that all of us may hear what you say. Your name is Gerald Rogers?

A. Yes, Gerald Rogers.

Q. I don't hear you?

A. Gerald Rogers.

Q. Are you related in any way to the other Mr. Rogers from Colorado, who came here and testified?

[fol. 825] A. No, sir.

Q. Just a coincidence of name, but no relationship?

A. Yes, sir.

Mr. Barnes: Now, the witness will have to talk very much louder for us to be able to hear him.

The Court: Yes, you will have to raise your voice, so that all the jurors can hear you.

By Mr. Barnes:

Q. Where do you live in Colorado?

A. Manitou Springs, Colorado.

Mr. Parsons: That is better; thank you.

By Mr. Barnes:

Q. Are you employed there, sir?

A. Yes, in Leonard's Grocery Store.

Q. I didn't get the name?

A. Leonard's Grocery Store.

Mr. Parson-: Leonard's?

Mr. Barnes: I got it the second time.

Q. Were you employed there in October, 1932?

Mr. Parsons: That is objected to on the ground it is immaterial.

The Court: Overruled.

A. Yes, sir.

By Mr. Barnes:

Q. You do not know this defendant when you see him?

A. Yes, sir.

Q. Do you know where the defendant lived in Manitou, on or about the 14th day of October, 1932?

[fol. 826] Mr. Parsons: That is objected to upon the ground that it is immaterial and irrelevant.

The Court: Overruled. You may answer.

A. Yes, sir.

By Mr. Barnes:

Q. Where was it?

Mr. Parsons: The same objection last stated.

The Court: The same ruling.

A. At the El Cajon Cottage, on Capitol Hill.

By Mr. Barnes:

Q. Were there any other cottages in the vicinity that were occupied?

Mr. Parsons: That is objected to as incompetent, irrelevant and immaterial, and it doesn't show that the witness knows, or has the means of knowing of the occupancy of other houses in that vicinity.

The Court: Overruled. You may answer.

A. About half a block.

By Mr. Barnes:

Q. The closest one was half a block, is that what you mean?

A. As well as I remember.

Mr. Parsons: The same objection.

The Court: Objection overruled.

By Mr. Barnes:

Q. Did you have a conversation with the defendant in the afternoon of October 14th, with reference to the subject matter of a grocery store?

Mr. Parsons: Just one moment. I object to that question upon the ground that it is irrelevant to the issues in this [fol. 827] cause, and does not establish any fact here.

The Court: Overruled. You may answer that "yes" or "no."

A. Yes.

Mr. Clark: Now, if your Honor please, I think the examination has gone so far that it will be necessary to make this specific objection to each and every question asked this witness concerning the defendant's statements, acts and conduct, as to the time to which the testimony relates. I think it would be necessary for me to make a similar objection to every question along the same line.

The Court: I take it that your objection basically is the same as that previously interposed to similar testimony, and particularly that interposed to conversations and declarations of Mr. James in Colorado.

Mr. Clark: Yes, your Honor, my thought being that all that was said and done there is irrelevant, and outside of the issues here.

The Court: That objection will be overruled, and it will be assumed that the same objection is made to each question, and the Court's ruling is the same as to each of the same objections.

Mr. Clark: If there should be any question for which a different reason might be urged for objecting, upon this or any other ground, we will call your Honor's attention to that.

The Court: And the Court reserves to itself the right to sustain the objection which is assumed to run here, if it

[fol. 828] should appear to the Court that the objection should be sustained, even without being specifically mentioned. You may proceed.

By Mr. Barnes:

Q. Tell us the conversation, Mr. Rogers.

A. I don't remember the exact words.

Q. Well, tell us the substance of it, then.

A. Mr. James ordered the groceries, and asked that they be delivered.

Q. Keep your voice up.

A. Mr. James ordered the groceries, and asked to have them delivered, and said he wanted to ride up with me when I delivered them.

Q. About what time of day was that conversation, approximately?

A. Somewhere around 5:00 o'clock.

Q. In the afternoon?

A. In the afternoon.

Q. And shortly after that conversation did you drive up to Mr. James' house with Mr. James in your truck?

A. Yes, sir.

Q. When you stopped the truck, both of you got out?

A. Yes, sir.

Q. Who carried the groceries?

A. I did.

Q. And where did you carry them?

A. In the front door, into the kitchen.

[fol. 829] Q. Are you familiar with the location of the rooms in the house?

A. Fairly, yes, sir.

Q. I am going to call your attention to a black board here, and so that if you draw anything, what you draw may be distinguished from what others may have drawn, I am going to take the liberty, Mr. Clark, of drawing a little square in the lower right-hand corner, as I face the black board, wherein this witness may draw. Will that be satisfactory, your Honor?

Mr. Clark: I have no objection, your Honor, to anything that the witness draws. The only objection I have is to the jury seeing what he draws.

The Court: Suppose you just draw a line right across separating the lower part of the board.

Mr. Clark: It will now be stipulated that a heavy crayon line has been drawn across the black board, and that everything upon the black board above that line there, with the exception of the letter "T"—I think that letter was on there at the start.

The Court: That letter "T" is painted upon the black board. It is a permanent fixture.

Mr. Clark: Everything above that line, except the letter "T" is a part of Exhibit 39 for identification, and that nothing may be placed upon the board below that line is a part of that exhibit.

[fol. 830] Mr. Barnes: That is stipulated. Do you believe, Mr. Rogers, that you can give us a rough drawing of the floor plan of that house? Could you do that?

A. I think so.

Q. Will you step down from the black board and do it, please? Make it as large as is convenient, in view of the size of the black board that you have to write upon.

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[fol. 831] By Mr. Barnes:

Q. What is this room that I am pointing to?

A. That is the front room, or living room.

Q. May we initial that "L.R." What is this room I am pointing to?

A. Dining room, I think.

Q. We will initial that "D.R." What is this room I am pointing to?

A. The kitchen.

Q. I will initial that "K." What is this room I am pointing to?

A. The bedroom.

Q. I will initial that "B.R." What is this room I am pointing to?

A. The closet, I think.

Q. I will initial that "Cl." What is this room I am pointing to?

A. The bathroom.

Q. I will write the word "Bath" in small letters in there. May I ask the jurors at the other end of the box if they can see the initialing and lettering?

A Juror: Yes.

Mr. Barnes: I call your attention to two parallel lines in the living room, intersecting the outer wall of the building. What do those parallel lines indicate in your drawing [fol. 832] ing?

A. The front door.

Q. I call your attention to two parallel lines in the partition between the living room and the bedroom. What do those parallel lines indicate?

A. The door.

Q. I call your attention to two parallel lines somewhat wider than the previous two, in the partition between the living room and the dining room. What do they indicate?

A. That is the big double doors.

Q. I call your attention to two parallel lines intersecting the partition between the dining room and the kitchen. What do they indicate?

A. The doors.

Q. Calling your attention to two parallel lines between the kitchen and the rear portion of the building, what do they indicate?

A. That is the door leading on to the back porch.

Q. There is a back porch, then, outside of this, and approximately where the word "rear" is written?

A. Yes, sir.

Q. Does that extend the length of the building, clear across, or just part way?

A. I couldn't say positively.

Q. I call your attention to two parallel lines between the bedroom and the bathroom in the partition. What does [fol. 833] that indicate?

A. The door.

Q. I call your attention to two other parallel lines between the kitchen and the bathroom, in the partition between those two rooms. What does that indicate?

A. The door.

Q. When you came in with the groceries that day, did you go in first, or did Mr. James, or do you recall?

A. Mr. James, as I remember.

Q. He preceded you in?

A. Yes, sir.

Q. Which way did he go when he entered—by the way, which door did he come in, the front or the rear?

A. We both came in the front door.

Q. I am going to stand back here, so we will be sure that you keep your voice up. Which way did Mr. James go when he went in that front door?

A. He went on into the bedroom.

Q. Will you point with the pointer to the path that he took?

(Witness indicates.)

Q. Which way did you go, as he went into the bedroom?

A. I went on through the dining room into the kitchen.

Mr. Parsons: What was that last answer?

Mr. Barnes: "I went on through the dining room into the kitchen." Did Mr. James call to any one when he went [fol. 834] in, that you heard?

A. I don't remember.

Q. Did you see Mr. James at any time in the kitchen?

A. Yes.

Q. Was that shortly after you had gone in there?

A. Yes, sir.

Q. Which way did he enter that kitchen?

A. He followed me on into the kitchen.

Q. Will you indicate on the drawing with your pointer the route by which he entered the kitchen?

A. I left Mr. James at this door, and went on into the kitchen.

Q. Yes.

A. And Mr. James followed me on into the kitchen afterwards.

Q. You are indicating there the route coming in from the dining room to the kitchen, with your pointer this way, are you not?

A. Yes, sir.

Q. When you saw Mr. James enter the door, then, he came through the door between the dining room and the kitchen?

A. Yes, sir.

[fol. 835] Q. Up to that time had you seen Mrs. James or her body?

A. I had seen Mrs. James through this door as I went through the other door with the groceries.

Q. I didn't understand you.

(Answer read by the reporter.)

Mr. Parsons: Let him indicate.

By Mr. Barnes:

Q. Will you indicate where Mrs. James was when you saw her?

A. She was on the bed in this room and as I went through this door into the kitchen I had seen her on the bed.

Q. I guess I didn't make myself clear. When you are speaking now of seeing Mrs. James on the bed, you mean on some other occasion, do you?

A. Yes.

Q. A day or two before that?

Mr. Clark: May I suggest that these questions are dangerously leading and suggestive.

The Court: Well, the questions might have been put in better form. However, they don't seem basically objectionable.

Mr. Clark: I don't want to seem too insistent, your Honor, but it has been four years——

Mr. Barnes: I will withdraw the question if there is any objection to it.

Mr. Clark: —since those things occurred and I think we should have the witness' own recollection without any suggestion that might be embodied in his testimony.

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[fol. 837] By Mr. Barnes:

Q. Now, you said that you had seen Mrs. James in the bedroom on the bed at some time when you entered?

A. Yes, sir.

Q. State whether or not that was on the day of the last time when you went up with Mr. James with the groceries?

A. No, that was not on the last day.

Q. Now, my questions are directed entirely to the last day that you were there, entirely omitting any reference to what you may have done or seen delivering groceries at any other time, confine yourself now to the last day. Do I understand that on this last day you went directly into the kitchen with the groceries?

A. Yes, sir.

Q. And on that last day which way did Mr. James go?

A. He went into the bedroom.

Q. That is what you have been talking about?

[fol. 838] A. Yes, sir.

Q. And then when you saw Mr. James again on that last day, which way did he enter the kitchen?

A. From the dining room.

Q. Through the door indicated here in the partition between the dining room and the kitchen?

A. Yes, sir.

Q. Up to that time on that day, the last day, had you seen Mrs. James or her body that day?

A. No.

Q. Did you look in the bathroom at any time after Mr. James had entered the kitchen?

A. Mr. James opened the door to the bathroom.

Q. It was closed before that?

A. Yes.

Q. And after he opened the door, did you look in?

A. Mr. James called me and I went to the bathroom.

Q. And when you looked in the bathroom, what did you see?

A. I saw Mrs. James.

Q. Where was she?

A. Lying in the bathtub.

Q. Was water in the tub?

A. Yes, sir.

Q. About how much water in the tub was there?

A. Almost half full, I would say.

Q. Was Mrs. James clothed or naked?

[fol. 839] A. Naked.

Q. Describe the manner in which you saw her lying in the tub?

A. She was lying on her back.

Q. And at which end of the tub was her head?

A. At the end with the faucets.

Q. Where were her feet?

A. Over the rounding edge of the tub.

Q. By "the rounding edge of the tub" do you mean the opposite end to the faucets?

A. Yes, sir.

Q. Was she moving at the time you saw her or was she apparently dead?

A. Apparently dead.

Q. Did you do anything then?

A. Mr. James and I picked her up and carried her in and put her on the bed.

The Court: Pardon me, Mr. Barnes. Had you finished your examination as to the description of the appearance before Mrs. James was taken from the bathtub?

Mr. Barnes: Pardon me just a minute. Where was Mrs. James' face, with reference to the water in the tub?

A. About the surface of the water.

Q. About the surface of the water?

A. Yes, sir.

Q. Was her face directly up or sideways, or how was it?

[fol. 840] A. It was up and a little forward.

Q. Did you notice whether or not the water in the tub was about her mouth and nose?

A. Just *bearly* covering them.

Q. Were her eyes open or closed?

A. Open.

The Court: This might be a good place to take our recess. We will take a short recess at this time. The jury will heed the admonition heretofore given.

(Recess.)

(After recess.)

The Court: You may proceed. Let the record show all parties present.

Mr. Clark: If the Court please, counsel has shown me some photographs, concerning which, at my suggestion, he is about to make an offer as to what he expects to show, that I might have the benefit of my objection and your Honor's ruling and so that it will be done expeditiously——

Mr. Barnes: Yes, I have here five photographs, which I hold in my hand which I will ask to be marked as 51.

The Court: 52, Mr. Barnes.

Mr. Barnes: 52, that is correct; 53, 54, 55 and 56, and with respect to these photographs being so numbered, I will state that they were made in the month of June by a photographer from Manitou in the presence of Mr. Jack Southard of the District Attorney's office and were taken by [fol. 841] his request and they are pictures of the outside and the interior of the house about which this witness has been testifying.

Mr. Clark: And you are offering them in evidence in connection with this witness's testimony?

Mr. Barnes: Yes, I am having them marked for identi-

fication. This witness will not identify one of these pictures. There will be other witnesses who will identify them.

Mr. Clark: Are you going to use one of them in connection with the testimony of this witness?

Mr. Barnes: I am going to use four of them.

Mr. Clark: It seems to me that it would be necessary to lay the foundation for the photographs first by introducing—

The Court: The first examination will be, of course, as to the question of admissibility.

Mr. Barnes: That is what I had intended to do. We haven't had the benefit of the witness's testimony on that subject, but counsel has requested that I state the time and circumstances of their taking.

Mr. Clark: There is no objection to them at this time, but I hope the witness on the stand will know, that after they are shown to him, I may make a specific objection.

Mr. Barnes: There is one that I will not show this witness, that is People's offer 52, and the other four I will.

Mr. Clark: Go ahead, I will stand around here by you.

Mr. Barnes: I will be glad to have you. I will show you People's Exhibit offer 56 for identification. Do you recognize [fol. 842] the portion of the house, the portion of the outside of the house shown in that picture?

A. Yes, sir.

Q. Is that a fair representation of the appearance of that house in October, 1932?

A. Yes, sir.

Q. Is that the house about which you have been testifying in which you saw the body of Mrs. James in the bathtub?

A. Yes, sir.

Q. I call your attention now to People's offer 55 for identification. I will ask you to state what that is.

Mr. Clark: Just one moment, that is objected to upon the ground that the evidence is incompetent.

The Court: The objection is overruled. There may be some criticism to that form of the question. However, you may answer it.

A. That shows a portion of the front room and the dining room.

Mr. Barnes: Is that a fair representation of the location of the rooms and the partitions, not with respect to the furniture, but with respect to the location of the rooms and the

partitions and doorways as it existed in October, 1932 in that house about which you have spoken?

Mr. Clark: That is objected to upon the ground that the evidence is incompetent, and calls for an opinion or a conclusion which it is not shown that he is qualified to express [fol. 843] and there is no foundation laid for its introduction by any showing that the photographs were accurately taken or that there has been no photographic device used to render them misleading, and that a foundation has not been laid in another respect, namely, that it has not been shown that the conditions as depicted in the photographs now are all the same as they were at the time to which this testimony relates.

The Court: Objection overruled.

Mr. Barnes: Will you read the question, please?

(Question read by the reporter.)

A. Yes, sir.

By Mr. Barnes:

Q. I call your attention now to People's offer 53 for identification. I will ask you to state whether or not that is a fair representation of the bathtub and the corner of the bathroom where the tub lies in the house about which you have testified on or about the 14th day of October, 1932?

Mr. Clark: That is objected to upon the same grounds and all of the grounds last stated.

The Court: Overruled.

A. As far as I can see, it is the same.

By Mr. Barnes:

Q. I call your attention now to another photograph showing in the lower lefthand corner a portion of a bathtub, in the center an open doorway, a window and a portion of a bed. [fol. 844] Leaving out of consideration in this question the location of the bed, and the portion of the chair, state whether or not the tub and the doorway and the location of the room appear to be shown here as a fair representation as that same scene was on or about October 14th, 1932?

Mr. Clark: That is objected to upon all of the grounds last stated, and it is objected to upon the additional ground that it is an attempt to lay a foundation for the introduction of

the picture by showing that some, but not all of the things depicted there are the same as the things were at the time to which the testimony relates.

The Court: Overruled.

A. Yes, sir, as nearly as I can say.

By Mr. Barnes:

Q. Was there a wash basin in the bathroom when you saw it on the 14th of October, 1932?

A. I don't remember. There probably was, I don't remember.

Q. Calling your attention now to People's offer 55 again, the one wherein there is a picture showing two doorways, state, if you will, what room the doorway on the left leads into?

A. This one?

Q. That is on the left, sir, yes.

A. That leads into the bedroom.

Q. And state what room the doorway on the right leads into.

[fol. 845] A. Into the kitchen.

Q. What is shown in the foreground of that picture I have just shown you, what rooms?

Mr. Clark: That is objected to upon the grounds last stated, and on the additional ground that it is secondary, incompetent, and not the best evidence.

The Court: Overruled.

A. On the left is the front room, and the right, the dining room.

Mr. Barnes: By the right you mean that portion of the room shown the other side of a pillar that appears in the picture?

A. Yes, sir.

Q. And going now to the scene that you saw when you looked into the bathroom when you saw Mrs. James' body in the tub, state whether or not her hips were on the bottom of the tub?

A. Yes, sir.

Q. Were her shoulders on the bottom of the tub?

A. Yes, sir.

Q. I couldn't hear.

A. Yes.

Q. How close to the end of the tub where the faucets were was her head?

A. I couldn't say positively. More to the side of the faucets, right close.

[fol. 846] Q. State whether or not the portion of the back between the shoulders and the hips seemed to be flat on the bottom of the tub?

A. I couldn't say.

Mr. Barnes: Cross examine.

Cross examination.

By Mr. Clark:

Q. Pardon me, Mr. Rogers, but how old are you now?

A. 28 years old.

Q. You were then about 24 years old at the time you are talking about, is that right?

A. Something like that.

Q. And the town of Manitou is about how large?

A. About 1000 population.

Q. I beg your pardon.

A. Around 1000 population.

Q. It formerly was known as Manitou Springs, was it not?

A. No, sir, it is known as Manitou Springs, now.

Q. Do you know the elevation approximately?

A. 7000 and something.

Q. It is essentially a summer resort, is it not?

A. Essentially, yes.

Q. And a considerable number of houses have been built there for the purpose of renting to summer visitors?

A. Yes, sir.

[fol. 847] Q. So that the population is very much greater in the summer time than during the rest of the year?

A. Yes, sir.

Q. That also is true, is it not?

A. Yes, sir.

Q. The summer season is pretty much over by September, is it not?

A. Yes, sir.

Q. By that time a considerable number of the houses have become vacant?

A. Yes, sir.

Q. Now, it is also true, is it not, that it is a region in which there is considerable wind during the fall months?

A. Not necessarily; sometimes.

Q. Do you remember how it was with respect to that, during the fall of 1932?

A. No, sir.

Q. About when did you first see Mr. James, as nearly as you can remember?

A. A few days before Mrs. James was found.

Q. And you first saw him at Leonard's Grocery Store, did you not?

A. Yes, sir.

Q. Am I correct in my understanding that that store is almost directly across the street from the post office?

A. Almost direct, and a little east.

[fol. 848] Q. It was the usual thing during your acquaintance with Mr. James, was it not, for him to go to the post office for his mail and get his groceries at the same time?

A. Well, as far as I know. I don't know about his mail.

Q. By the way, this is—may I have that photograph? Manitou is situated along a canyon, is it not?

A. Yes, part of it on the side of the hill.

Q. What would you say is the character of the ground where the house is shown in this photograph, marked Exhibit 56?

A. The house sits almost on top of it.

Q. And when Mr. James ordered any considerable canned goods or groceries, he had them delivered, didn't he?

A. Yes, sir.

Q. And it occurred on one or two occasions that he rode up with the delivery, didn't he?

A. Yes, sir.

Q. Now—I imagine that the cross examination will be very brief—Directing your attention to the tub shown in Exhibit 53, does that look to you like the same tub that you saw in 1932 in that house?

A. Yes, as far as I know.

Q. Of course, whether it is the same tub, the tub that was in there was taken out?

A. No.

Q. But it was a tub of the same size and character as far [fol. 849] as your faculties serve you?

A. Yes, sir.

Q. How long would you say that the tub was, there in October, 1932?

A. I don't know the exact length.

Q. Would you be prepared to say about four feet?

A. I would think so.

Q. And was that a metal tub, enameled over or a porcelain tub?

A. I couldn't say.

Q. Well, at any rate, the tub was smooth and white?

A. Yes.

Q. Now, I wonder if you would oblige me, Mr. Rogers, by taking this little piece of crayon and drawing a white line to designate the route that you took on this occasion from the time you entered the house until you entered the bathroom?

[fol. 850] A. Do you mean draw it here?

Q. Yes, will you be kind enough?

(Witness indicates.)

Q. Now, you have stopped in the kitchen. You went on from the kitchen into the bathroom, didn't you?

A. Yes, sir after Mr. James came.

Mr. Barnes: We can't hear the witness?

Mr. Clark: "Yes, after Mr. James came." I am going to ask you presently to draw a line indicating the route taken by Mr. James. Now, leaving a break there to indicate that you stopped for a time in the kitchen, will you draw another line showing the route you pursued from the kitchen to the bathroom?

(Witness draws.)

Q. I think you may be seated, now. Thank you.

Mr. William: May we, for the purpose of the record, have that line marked "A" at the beginning, and "B" at the end?

Mr. Clark: That is supposed to be an "A". It is really a triangle. It was intended for an "A", and the end in the bathroom has been designated with the letter "B".

Mr. Barnes: May I make one suggestion, also, that you retrace the line, Mr. Clark, a little heavier. It is almost impossible to see it from this end of the jury box.

Mr. Clark: That is all right, Mr. Barnes. I thank you for the suggestion. May I make a counter-suggestion, that we [fol. 851] wait a few moments for that. I assure you it will be done before the witness leaves the stand.

Q. Now, from the lines you have drawn I infer that there was a door between the kitchen and the bathroom?

A. Yes, sir.

Q. And you went through that door in order to gain access to the bathroom?

A. Yes, sir.

Q. Before you did that, however, you had seen Mr. James enter the bathroom?

A. Yes sir.

Mr. Clark: Has not your Honor a red pencil?

The Court: I was just wondering about the advisability of using a pencil on the black board?

Mr. Clark: A colored crayon would be better, I think. Perhaps we may be able to secure some during the noon recess. I am sure the examination will extend beyond the noon recess.

The Court: If not, you may duplicate our school days' experience, and dip a piece of white chalk in red ink.

Mr. Clark: I might say that that is a device I never resorted to, your Honor.

Q. Now, the bathroom, as I have its location in mind, was located between the kitchen and the bedroom, is that correct?

A. Yes, sir.

Q. Now, did this house front toward the south, east, north [fol. 852] or west?

A. South, as nearly as I can tell.

Q. And during that season the prevailing wind blows down the canyon, does it not?

A. Sometimes; not always.

Q. Well, you have more wind at that season blowing from west to east than from any other direction, have you not?

A. I really don't know.

Q. Well, now, with regard to the kitchen, it, of course, had windows?

A. Yes, sir.

Q. You haven't designated any of those windows in this drawing, have you?

A. No, sir.

Q. Would you be kind enough to take the pointer and point as nearly as you can to where the windows in the kitchen were located?

A. On this side of the room; I don't know exactly where.

Q. And by "this side of the room" you are referring to the extreme left-hand side of the drawing?

A. Yes, sir.

Q. Now, did you notice about what the height of the bottom of the windows, the kitchen windows, was from the ground?

A. I didn't notice.

Q. Well, the kitchen was equipped with a sink, and drain-board, was it not?

[fol. 853] A. I think so.

Q. And the windows were located above that, weren't they?

A. I think so.

Q. And the sink was about as high as the railing of the witness box, that is, the top of the drain-board was about as high as the top of the witness box in which you are now sitting, wasn't it?

A. Well, not quite.

Q. Do you think an inch or two less than that?

A. Yes, sir.

Q. Now, was there one window, or two windows there?

A. If I remember right, there were two small windows.

Q. And upon this day in October, did you notice whether those windows were open?

A. No, sir.

Q. You don't know?

A. No, I don't.

Q. You do know that during that afternoon there was a good strong breeze blowing, don't you?

A. I don't remember.

Q. That was the common thing in afternoons in that season, wasn't it?

A. Not common, but sometimes.

Q. Didn't you almost always have a cool breeze blowing along about half past 3:00, or 4:00 o'clock?

A. That is true.

[fol. 854] Q. Now, you, of course, were expecting to see a woman in that house when you went in there on this occasion?

A. No, sir.

Q. You had seen her there upon other visits?

A. I had seen her once.

Q. You weren't, anyway, expecting to see a dead woman?

A. No, sir.

Q. You were somewhat shocked to find that there was a dead woman in the house?

A. Yes, sir.

Q. You felt considerably excited by that discovery, didn't you?

A. Yes, sir.

Q. And you didn't, under the influence of that shock, and during that excitement, make very careful observations of the conditions that you then saw, did you?

A. No, sir.

Q. Now, as a matter of fact, you never did notice how deep the water was in the bath tub, did you?

A. Well, it was up around her face.

Q. Now, referring again to the tub, the tub had an outlet for water slightly below the faucets, didn't it, so that when the tub became so full the water would automatically flow out? Isn't that the way the tub was arranged?

A. Yes.

Q. Did you notice how near the water was up to that [fol. 855] place for it to flow out?

A. No, sir.

Q. Did you notice whether or not the water was soapy?

A. Yes.

Q. It was?

A. It was soapy.

Q. And did you see anything of a package of soap flakes in that bathroom?

A. I don't remember.

Q. How long was it, as nearly as you can tell us, after you entered the house before you put your hand upon some portion of the body of this woman?

A. I don't remember; only a few minutes; a very short time.

Q. And when you did put your hands on the body of the woman it felt slippery from the soapy water, didn't it?

A. Yes, sir.

Q. And it also felt quite warm, didn't it?

A. Yes, sir.

Q. There was some conversation occurred there between you and Mr. James as to whether life was extinct, or not, was there not?

A. There probably was; I don't remember.

Q. Now, you were then about the same size you are now, I take it?

A. I think so, about the same, yes.

[fol. 856] Q. You weigh about how much?

A. About 135.

Q. And you and Mr. James carried this woman from the bathroom to the bedroom, didn't you?

A. Yes, sir.

Q. And you carried about the equal part of her weight as that carried by Mr. James?

A. I carried her under the knees, and he carried her under the shoulders.

Q. And as you carried her, did you go through the doorway leading to the bedroom first, or did Mr. James?

A. Her feet was toward that door, so I imagine I did; I don't know.

Q. About how far was that house from the grocery store?

A. About a mile; one mile.

Q. Now, you spoke about a block. You have no ordinary blocks in Manitou, have you?

A. Well, it is really not in blocks.

Q. Well, at any rate, the other house, in proximity to this one you spoke of, was distant about 150 feet, was it not?

A. Well, there were houses nearby.

Q. Quite a number of them, weren't there?

A. Yes.

Q. This house that Mr. James was occupying was not isolated away off by itself, was it?

[fol. 857] A. No, sir.

Q. And the other houses that you speak of, were some of them vacant and some of them occupied? Weren't they?

A. Yes, sir.

Q. Now, one detail that I am not clear in regard to, Mr. Rogers: When Mr. James entered the bathroom, did he go back out into the kitchen, or did he remain in the bathroom until you came?

A. Well, he stepped back into the kitchen?

Q. And you followed him into the bathroom?

A. Yes.

Q. When you got there he had the body of Mrs. James in his arms, did he not?

A. No, sir, not yet.

Q. I beg your pardon?

A. No, sir.

Q. It was lying in the tub?

A. In the tub.

Q. You don't know whether Mr. James had had hold of her before you came in or not, do you?

A. No, sir.

Q. Well, Mr. James went directly to the tub and took hold of her body, did he not?

A. I think so.

Q. So that it was only a matter of seconds that you saw her body in the water, before Mr. James raised it up, that is [fol. 858] true, isn't it?

A. Yes, sir.

Q. And all the observations that you made as to how her body was lying there, and how much of her head was under water, was during just those seconds, that is also true, isn't it?

A. Yes, sir.

Q. Do you still live at Manitou?

A. Yes, sir.

Q. You have at this time no business in Los Angeles, other than testifying in this case, have you?

A. No, sir.

Q. You came down here for the express purpose of giving your testimony?

A. Yes, sir.

Q. You were employed by the District Attorney's office to do that?

A. I was asked to come.

Q. Well, you were promised compensation for coming, were you not?

A. My expenses.

Q. You have received some money on account of expenses, haven't you?

A. I received money for eating money, and to get here.

Q. And you expect to receive more money, don't you?

A. My expenses back.

[fol. 859] Mr. Clark: If your Honor please, the usual hour of adjournment has arrived, and the cross examination will not be very extensive.

The Court: We will take our recess at this time, ladies and gentlemen of the jury. You will heed the admonition heretofore given. The audience will remain seated until the jury has retired.

(Whereupon, a recess was taken until two o'clock p. m.)

[fol. 860] Thursday, July 2nd, 1936; Afternoon session,
2 o'clock P. M.

The Court: Let the record show all parties present. Mr. Rogers, please.

GERALD ROGERS, resumed the stand and testified as follows:

Cross-examination (Continued).

By Mr. Clark:

Q. Mr. Rogers, you didn't see from what direction Mr. James came into the store on that last occasion, did you?

A. Well, there is only one way to come in.

Q. You mean that there is no street extending above and below the store?

A. There is no street in back.

Q. Well, the store in front, you didn't see whether he came down hill or up hill?

A. No, sir.

Q. Now, you don't know whether he came from Colorado Springs or not, do you?

A. No, sir.

Q. And you don't know whether he had been at his residence at any time that afternoon or not, do you?

A. No, sir.

Q. He made no statement to you as to when he had last been at his residence, did he?

[fol. 861] A. I don't remember.

Q. Now, in carrying this woman from the bathroom to the bedroom, in order to avoid dropping her, you used both arms and hands, didn't you?

A. I used both hands under knees.

Q. And kept hold of her with both arms from the time you first picked her up until the time you laid her down on the bed?

A. Yes, sir.

Q. She was rather a large woman, wasn't she?

A. As I remember it, yes.

Q. You would estimate she would weigh around 150 or 160 pounds or more, wouldn't you?

A. I don't know.

Mr. Clark: That is all.

Redirect examination.

By Mr. Barnes:

Q. Just one or two questions. Are you a married man?

A. Yes.

Q. How long have you been married?

A. About seven years.

Q. With respect to this water in the bathtub when you reached in to get your part of the body to carry it, did you put your hands in the water?

A. Some, yes.

Q. Was it cold water?

[fols. 862-863] A. No.

Q. Was it hot water?

A. No.

Q. How would you describe it, like warm?

A. I suppose so.

Mr. Barnes: That is all.

The Court: Did you notice at the time when Mr. James came into the kitchen, that is, before you went into the bathroom, whether his clothing was wet or dry?

A. I didn't notice.

Q. Did you notice whether his sleeves were rolled up or not?

A. I don't remember.

Recross-examination.

By Mr. Clark:

Q. Was he in his shirtsleeves wearing a coat?

A. I don't remember.

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[fol. 864] DOCTOR GEORGE B. GILMORE, called as a witness in behalf of the People, being first duly sworn, testified as follows:

The Clerk: State your name, please.

The Witness: Dr. George B. Gilmore.

Direct examination.

By Mr. Barnes :

Q. What is your residence, Doctor?

A. Colorado Springs, Colorado.

Q. What is your business?

A. Physician.

Q. Are you practicing your profession in Colorado at the present time?

A. Yes, sir.

Q. And how long have you been practicing there, Dr. Gilmore?

[fol. 865] A. 32 years.

Q. And at the present time you are in the private practice of medicine?

A. Yes, sir.

Q. At the present time you hold no official position? You have come here as a witness at the request of the prosecution of the People of the State of California, in this case?

A. Yes, sir.

Q. State to the Court and jury what, if anything, you have received or expect to receive for coming here.

A. They agreed to take care of my expense coming out and expenses while here and a small per diem while I am away from home.

Q. That is to compensate you for less than you would make in your professional work?

A. Yes.

Q. It would not thoroughly compensate you?

A. Well, I think not.

Q. Now, in the year 1932, on the 14th day of October, did you go to Manitou to see the remains of a lady?

A. I did.

Q. And when you got to that house, did you see Mr. James?

A. Yes, sir.

Q. At that time, as I understand it, you were the coroner?

A. Yes, in El Paso County.

[fol. 866] Q. And Colorado Springs is in the center of El Paso County?

A. The County Seat.

Q. The County Seat, I should say?

A. Yes.

Q. When you arrived there did you see a lady in the house?

A. Yes, sir.

Q. A deceased lady?

A. I did.

Q. And where was she?

A. She was in the bed, lying in the bed in the bedroom.

Q. Did you talk to the defendant—

Mr. Clark: Just one moment. Go ahead and finish.

By Mr. Barnes:

Q. —about that lady that you saw there?

Mr. Clark: We object on the ground it calls for evidence that is irrelevant and incompetent.

The Court: Overruled; you may answer, Doctor.

A. I did.

By Mr. Barnes:

Q. I will call your attention to People's Exhibit 49 for identification and two persons in and upon an ink circle shown in this picture, to which I am now pointing. Do you recognize the gentleman there?

A. Mr. James.

Q. And do you recognize the lady?

A. In a general way I would say that resembles her.

Q. That is the lady you saw dead in the house there, [fol. 867] where you saw Mr. James?

A. Yes, sir.

Q. Did you talk to Mr. James about the lady that you identified in this picture?

Mr. Clark: That is objected to on the ground that it is incompetent, irrelevant and immaterial.

The Court: Overruled; you may answer.

A. I did.

Mr. Clark: It is apparent, if your Honor please, that at this time that we will wish to object at all times to such subject matter which, according to our conception of the law, has no place in the record, and I think, your Honor, has a different view, and that your Honor would overruled

the objections if they were made and it is not our desire to delay the progress of the trial.

The Court: You can make a general objection and I will consider all your objections as made upon the same ground.

Mr. Clark: Yes, your Honor.

The Court: The objection is overruled. The objection is the same as made by Mr. Clark concerning the general testimony and also relating to the conversation with Mr. James. The objection is overruled.

By Mr. Barnes:

Q. State the conversation you had with the gentleman, Mr. James.

A. Well, he told me that he had gone to Colorado Springs during the day to consult with an insurance company there [fol. 868] in regard to a change he was negotiating on an insurance policy, and he had expected to find some mail at this office, I believe, that had arrived in the morning, but the mail had failed to arrive in the morning, and he waited over for the afternoon mail to get into this office in regard to the loan that he was negotiating. So that he had been away from the home in Manitou for several hours, and that he had returned to Manitou and made the purchase of some groceries which he had delivered to his house in Manitou, and in going into his house, he didn't find his wife and didn't see her in the bedroom, he had then looked into the bathroom and found that she was in the bathtub. This delivery man from the grocery store was in the house at the time, and the two of them took her from this tub of water and put her on the bed in the bedroom.

[fol. 869] Q. Did he say whether or not the water was still in the bath tub?

A. Yes, there was water in the bath tub when I arrived, and he told me that was the water that had been there when the body had been removed.

Q. Did you look at it, and touch it?

A. I did.

Q. Describe what you found?

A. The water was rather soapy. The bathtub was perhaps a third full at that time, as I remember it, and was rather luke warm in character.

Q. Was there anything said about soap?

A. Yes, he remarked that he had found out of its posi-

tion—it seems to me he said that he found this Ivory Soap carton on the kitchen table, or perhaps the drain board in the kitchen, and presumed that some of these soap flakes had been put into the tub of water after the water had been put in the tub.

Q. Did he say anything about washing?

A. Yes, he then told me, or later, while I was there, he told me—I am not certain as to the exact sequence of these events—he told me about this accident, this head injury that she had sustained on a previous occasion, about her having been in the hospital, and about while she was in the hospital, prior to her leaving the hospital, she had been [fol. 870] requesting the doctor and the nurses that she might have her head shampooed, her hair; that this had been repeatedly refused by the doctor, and, of course, not carried out at her request by the nurses, and that since she had gone to this cottage in Manitou a few days previously, she had been wanting Mr. James to shampoo her hair, which he had refused to do.

Q. Did he tell you why he had refused to do so?

A. Because the Doctor had ordered that her hair be not washed. I don't remember whether he told me any reason that the doctor had given for that, or not. Then he went on to say—

Mr. Clark: Just a moment. May I have that answer read?

(Answer read by the reporter.)

Mr. Clark: Thank you. I was under a misapprehension as to what the answer was.

Mr. Barnes: Proceed, Doctor.

A. He then told me that when he left the house to go to Colorado Springs that she was in bed, and that she had, of course, been instructed to stay in bed, and that his assumption was that in view of the fact that she had been wishing to have her hair shampooed that she took advantage of his absence, being there in the house alone, and had gotten up out of bed, gone into the bathroom, and ran the water in the tub, put the Ivory Flakes in it, and that her body was unclothed when he came in, and her night gown was in the [fol. 871] bathroom in one corner of the room, and that the body had been found in the tub, and that Mr. Rogers was in the house, and they, together, had taken the body from the tub and put it on the bed.

Q. Did you say anything to Mr. James with reference to the question of autopsy?

A. Yes, I told Mr. James that I thought it would be a good plan to have an autopsy on this body, so that we might better know exactly what had been the cause of death. To this statement he said that he just couldn't permit anything of the sort, and much preferred that I wouldn't have the autopsy.

Q. As I understand it, in Colorado unless a Coroner's Jury orders an autopsy, the County Coroner can't have it on his own volition, is that the situation?

Mr. Clark: Just one moment. That is objected to upon the ground that it calls for the opinion of the witness upon a question of law, and it has not been shown that he is competent to express such an opinion, and that the evidence is incompetent.

The Court: I think that all that is necessary is for counsel to call the Court's attention to the provision of law, with which I am not off hand familiar, but of which I would take judicial knowledge. I think that while technically I could hear the testimony to acquire the information on which I could take judicial knowledge, while I think the [fol. 872] objection could be circumvented, I have no desire to do so. Objection sustained.

By Mr. Barnes:

Q. After this occasion did you receive from any person a letter in regard to this matter?

Mr. Clark: We think that that is irrelevant for other reasons. The objection that it is incompetent and irrelevant covers it.

The Court: It is obviously merely preliminary, and nothing in the question to indicate either way. Assuming that the question is asked by counsel in good faith, the objection is overruled.

A. I did.

By Mr. Barnes:

Q. From whom did you get the letter?

Mr. Clark: Just a moment. That is objected to upon the ground that it is incompetent, irrelevant and immaterial, and calls for the opinion of the witness.

Mr. Barnes: I will withdraw it, and reframe it.

The Court: I think the latter portion of the objection is good.

Mr. Barnes: I will withdraw it.

Q. Was the letter delivered to you by some person?

Mr. Clark: That is objected to upon the ground that it is immaterial, and there are other grounds of its irrelevancy, other than those stated in the general objection.

The Court: The objection will be overruled.

A. It was.

[fol. 873] By Mr. Barnes:

Q. Have you the letter now?

A. Yes, sir.

Q. May I see it? May I have the envelope, also?

(Witness hands documents to Mr. Barnes.)

Mr. Barnes: Thank you.

The Court: It will be marked 57 for identification.

Mr. Barnes: There are two separate pieces of paper, your Honor.

The Court: I think we will mark them both as one exhibit.

Mr. Barnes: And an envelope. May we have them all marked as one exhibit?

The Court: Yes.

By Mr. Barnes:

Q. From whom did you receive this People's offer—57, is it, your Honor?

The Court: Yes, 57.

A. From Dr. Hanford.

The Court: Dr. Hanson, H-a-n-s-o-n?

A. Hanford, H-a-n-f-o-r-d.

Mr. Barnes: May I pin these two pieces and the envelope together, your Honor?

The Court: Yes.

Mr. Barnes: Have you a pin, Mr. Clerk? (Papers attached together by Clerk.)

Q. Who is Dr. Hanford?

A. He is a physician.

Q. Is he a physician in Colorado?

[fol. 874] A. Yes, sir.

Q. Likewise practicing in Colorado Springs?

A. Yes, sir.

Mr. Clark: We will stipulate.

Mr. Barnes: Counsel have kindly offered to stipulate, your Honor, that with respect to the smaller sheet of the two, upon which there is typewriting, contained in People's offer 57, that the signature "Robert S. James", was that of the defendant.

Mr. Clark: Yes, so stipulated.

The Court: So stipulated, gentlemen?

Mr. Silverman: Yes, so stipulated.

The Court: And you accept, Mr. Barnes?

Mr. Barnes: We accept.

The Court: The record will so show.

By Mr. Barnes:

Q. After receiving People's offer 57, did you make any change in the death certificate?

A. I did.

Q. And after making the change, did you send copies anywhere?

A. I took two copies to the Registrar's office in Manitou, that being the place where the person had died, and then I sent, as requested in this letter, three or four copies to Mr. James in California.

Q. Through the United States Mail?

A. Yes, sir.

[fol. 875] Q. In a letter addressed to him? and deposited in the mail?

A. Yes, and by Air Mail, I believe.

Mr. Barnes: At this time we offer the Exhibit 57 in evidence.

The Court: May I see it, first, for a moment?

Mr. Clark: In addition to our general objection, we make further objection that no foundation has been laid in this, that it appears from an inspection of it that it is a part of the general correspondence, and correspondence not ac-

ceptable to us, and I think it is incompetent. Now, for other reasons, we impress the general objection.

(The Court thereupon examined Exhibit 57.)

The Court: The objection is overruled. It will be marked 57 in evidence.

Mr. Barnes: May I read it to the jury at this time?

The Court: You may do so.

Mr. Barnes: (Reading): "Los Angeles, Cal., October 21st, 1932. Swan Funeral Home, 316 N. Tejon, Colorado Springs, Colo. Gentlemen: After looking over my insurance papers I find that the company may not pay for accidental drowning. I wish you would get in touch with Dr. Hanford and assist him in having the coroner's certificate changed. I am sending you copy of the letter which I have sent to the doctor so you will know what I have told him. Thanking you in advance for your courtesy, I am Yours [fol. 876] very truly, Robert S. James. Robert S. James, 857 S. Grand Ave., Los Angeles, Calif.", which signature in pen and ink is the one to which we stipulated a moment ago as having been in the defendant's handwriting. (Continuing reading):

"Los Angeles, Calif., October 21, 1932. Dr. P. O. Hanford, 720 N. Nevada, Colorado Springs, Colo. Dear Dr. Hanford:

"In going through the insurance papers we find that there is a clause which relieves the company from paying for accidental drowning except it is directly caused by another accident which we all know was true in this case, if she was drowned.

"The Coroner's decision as it now stands may make it impossible for us to collect the insurance with which we had expected to pay our bills but we are told that if the real cause of this accident is told in the death certificate we will have no difficulty in collecting and have been advised to have this cause stated.

"We know you will do everything you can for us and wonder if you could have this verdict changed or add the words 'caused by cerebral hemorrhage' or words to that effect.

"We surely appreciate everything you have done, Doctor, and trust you will do everything in your power to get this fixed up immediately and send us corrected death certificate.

Whatever expense there may be to you in getting this fixed [fol. 877] up, if any, we will be glad to pay.

"We expect a quick settlement but owing to the incomplete statement on the death certificate we are told there is apt to be delay unless this is completed before the claim is sent in. We are sending this by air mail and will appreciate your returning it the same way at your very earliest possibility.

"It will be necessary for us to have four of these certificates and to have the original report changed in Manitou. We are returning one copy as a sample. We claim that her death was directly caused by her serious injury in the automobile accident. Sincerely yours, Blank", and then, "Robert S. James", in typewriting, not handwriting, "857 S. Grand Ave., Los Angeles, Calif.

"P. S. Please change the name of my wife from Winona P. James to Nona P. James on the death certificates which you are sending us and on the record in Manitou as Nona is the name under which she was christened. There was another error on the death certificate as her father's name is Halbert C. Wallace instead of Holbert C. Wally."

By Mr. Barnes:

Q. I show you People's offer 56 for identification. Do you recognize that as a fair representation of the outside appearance of that house in which you found the body of Mrs. James?

A. I didn't see the front of the house.

Q. Well, you went in the back of the house, didn't you? [fol. 878] A. I went in the back door. The back door of this cottage is nearer to the road where I parked my car, so I went in the back door, and when I left the house I went out the back door. I didn't see the front of the house.

Q. I call your attention to People's offer 53, where there is a bath tub shown. Is that a fair representation of the bath tub that you saw there on that occasion?

A. I think it is.

Q. I call your attention to People's offer 52, which is a picture of a wash basin. Was such a wash basin as is shown in that picture there at the time you made this trip to see this body?

A. There was.

Q. And is that a fair representation of the appearance of that wash basin as it appeared on the 14th of October, 1932?

A. It is.

Q. I show you another picture marked People's offer 54 for identification, which shows a portion of the bathroom, and a portion of the bedroom. Is that a fair representation of what it purports to show?

A. It is.

Q. Likewise, I show you People's offer 55 for identification, showing a portion of the living room, and dining room, and the two doorways leading into the bedroom, and the kitchen. Is that a fair representation of what it purports to show?

A. It is.

[fol. 879] Q. And these pictures that I have shown you that you do recognize, fairly represent the conditions as they existed in October, 1932?

A. Yes, sir.

Mr. Barnes: Cross examine.

Cross-examination.

By Mr. Parsons:

Q. Doctor, about what time of day was it when you arrived?

A. Right about 6 o'clock in the afternoon.

Q. In the evening?

A. Yes, sir.

Q. And was Mr. James there at the house when you arrived?

A. He was.

Q. And at the time that you had this conversation with Mr. James and you obtained from him certain information, did he frankly and freely answer your questions?

Mr. Barnes: That is objected to as calling for a conclusion.

The Court: Sustained.

By Mr. Parsons:

Q. Did he unhesitatingly answer your questions?

Mr. Barnes: The same objection.

The Court: Same ruling.

By Mr. Parsons:

Q. At the time that he answered your questions at the time you put the questions to him, did he promptly reply? [fol. 880] A. He did.

Q. And at the time that you reported this matter to the press, isn't it a fact, that when it was first reported it was reported that the contributing cause of death was cerebral hemorrhage?

A. I don't think I reported it to the press in the first place.

Q. Well—

A. And I don't remember of hearing anything about cerebral hemorrhage in this case until this letter was handed to me.

Q. And was there some report made by the officials in attendance or the doctors in attendance at or immediately subsequent to the time of learning of her death that she had cerebral hemorrhage as one of the contributing causes of death?

Mr. Barnes: That is objected to on the ground that the question is indefinite and not proper cross examination.

Mr. Parsons: Strike it.

Q. Was there any report given out by the attending physician of this woman shortly after her death, that cerebral hemorrhage was a contributing factor contributing to her death?

Mr. Barnes: That is objected to on the ground that it is hearsay.

[fol. 881] The Court: I think, in view of all the surrounding circumstances that I will permit the answer. You may answer, Doctor, if you know.

A. It was not reported to me that way.

By Mr. Parsons:

Q. Well, Doctor Hanford eventually indicated, did he not, that cerebral hemorrhage was actually one of the contributing factors of her death?

A. Not to my knowledge.

Q. Not to your knowledge?

A. No, sir.

Q. And now was the death certificate changed to indicate cerebral hemorrhage was a contributing cause of death?

A. No, sir.

Q. And what did the death certificate show as the cause of death?

A. The primary cause was given as accidental drowning, and contributing cause was given as skull fracture and head injury sustained on September 21st, I believe was the date, in other words, at the time of her injury in the automobile.

Q. Now, who made out that certificate in the form that you have told us that it was made?

A. The death certificate?

Q. Yes.

A. I filled in the one portion of it.

Q. Well, the portion that you have just indicated, pertaining to the cause of death, did you fill that in?

[fol. 882] A. Yes, sir.

Q. And that cause of death that you set down, Doctor, was because of your examination of the body?

A. Yes, sir.

Q. And the history of the case?

A. Yes, sir.

Q. And that was your best judgment at the time?

A. That was my judgment at the time.

Q. Now, when was the death certificate made out with reference to your first visit to the house?

A. Well, I would say in a day or two. The custom in Colorado Springs in cases of this sort, of cases of death of any person, is for the undertaker to secure the information, such as the name of the individual, their age, their father's and mother's name and place of birth, and fill that in, and then it is brought to the physician. Or in the case of a coroner's case, to the coroner, who places in the date of death, the cause of death and that portion on the certificate. So that must be done prior to the burial of the body or the removal of the body from the county. Here it was done sometime after October 14th and prior to the shipment of the body from Manitou Springs.

Q. It was done so that the body could be shipped?

A. Yes, sir.

Q. There was no inquest held in this matter, was there?

A. No, sir.

[fol. 883] Q. After your examination, Doctor, as to the physical facts, and your examination of the body, and the

history which you obtained of the death of this person, you were satisfied that the cause of death, as set down by you in the certificate, was true and correct, in the best of your opinion?

A. I was satisfied to the point of being willing to fill out this certificate and pass it at that time without an inquest.

Q. And you did so?

A. Yes, sir.

Q. And where there is any serious question in your mind as an officer of that county, coroner of the county, as to the exact or actual cause of death, you usually call an inquest, do you not?

A. I would have an inquest, yes.

Mr. Parsons: That is all.

Redirect examination.

By Mr. Barnes:

Q. Now, when you put down the history upon which you rely, when you filled in that certificate, did you know anything about that history, the details of the accident on Pikes Peak as told by Mr. J. D. Rogers on the witness stand?

Mr. Parsons: Now, just a minute; that is objected to as incompetent, irrelevant and immaterial.

Mr. Barnes: I withdraw that question and reframe it.
[fol. 884] Q. At the time you made out this death certificate and relied on the history concerning which you have been asked on cross-examination, did you have any knowledge whatsoever that with respect to the accident on September 21st, 1932, the defendant had claimed that the deceased, the then deceased, known as Winona James, deceased, his wife had been running an automobile down Pikes Peak, and that when people went to view her, they found her body on the righthand side of the car, and that there was human blood on the cushion of the coupe, behind the seat and on the seat on the righthand side of the car and a bloody hammer on the floor board upon that—

Mr. Clark: Just a moment now.

By Mr. Barnes:

Q. —under the seat, where a person would be sitting in the car.

Mr. Parsons: To which we object as incompetent, irrelevant and immaterial and not proper redirect examination. The question is the history of the cause of death, but as to the physical facts pertaining to the injury of the person and not how the accident occurred——

The Court: The difficulty is, that if you turn the witness over for cross-examination, the Doctor's statement was that the examination was made——

Mr. Parsons: The injury to the patient.

The Court: That is not what he said.

Mr. Parsons: I will ask to correct it now.

[fol. 885] The Court: I do not think you can alter your situation. If on cross-examination you open the door to redirect examination, you cannot sustain an objection by asking to re-examine a witness or to withdraw the question asked on cross-examination.

Mr. Parsons: That may be true, but certain improper judgment or inference cannot be drawn from a question, the only history to which the examination should have been directed, but my own intention would have been to elicit the factors that contributed to the death of this woman. How the accident happened certainly could not enter into it.

The Court: You still overlook the questions that you asked, Mr. Parsons. You asked the doctor whether his certificate was not based on his examination and the history of the case. There is nothing to indicate where he received his information or what it was. You left it right there. It didn't indicate what the history was.

Mr. Parsons: The only history that I think that the doctor could take into consideration in determining the cause of death, that is a matter that is obtainable from yourself. The only history he could refer to is the type of injury.

The Court: Mr. Parsons, departing from this case, merely for the purpose of discussion. If a body were found in the ocean, floating there, by the coroner, and the apparent death was by drowning and the doctor received certain other information and he came to the conclusion that death was due [fol. 886] to drowning with an inducing cause, say, of an epileptoid, and there turns out in addition to that, facts tending to produce death, then we have a similar circumstance, if the doctor said he based his history of the case on the evidence.

The objection is overruled.

By Mr. Parsons:

Q. Had you received that history which was embodied in the question I asked you?

A. I had not.

Mr. Barnes: That is all.

Recross-examination.

By Mr. Parsons:

Q. Before signing this death certificate, had you consulted the attending physician?

A. I had.

Q. And you had learned that she had been in the hospital, attended by Doctor Hanford?

A. Doctor Hanford told me about this——

Q. What do you mean?

A. That is the thing that is referred to there, about the history of being treated by Doctor Hanford.

Q. That didn't include the——

A. No.

Mr. Parsons: I just wanted one question about the doctor. [fol. 886-a] The Court: I think there is some misunderstanding. As I understand it, Doctor, your death certificate was based on what Dr. Hanford told you, and based on your actual observation?

A. I based my opinion on what Dr. Hanford told me about her after being placed in the hospital for care.

Q. In other words, you had the medical history of the case?

A. Yes, I had that first, and then what Mr. James told me at Manitou, and some other investigation which I made that evening, and that was all I believed at that time.

The Court: That will be all.

Mr. Parsons: Just a minute, Doctor—May I open my cross-examination for brief questioning, your Honor?

The Court: Certainly.

By Mr. Parsons:

Q. At the town of Manitou, Doctor, it is about 10,000 altitude, is it not?

A. No, sir.

Q. What is the altitude?

A. The Springs is 6,000, and the town 400 feet higher.

[fol. 887] Q. And in an altitude between six and seven thousand feet, it is not uncommon for persons coming from the coast to that region, especially if they have suffered some injury about the head, to suffer fainting spells, is it?

A. Well, I can't say that I have ever seen anybody in Manitou that had fainted.

Q. Well, it isn't uncommon for persons coming from the coast or that region, making a trip within the period of a few days from sea level to that altitude to suffer spells of dizziness, is it?

A. I think it would be very unusual to be dizzy at an altitude of 6000 feet.

Q. You think it would be?

A. Yes, sir. Of course, in going higher, such as the top of Pikes Peak, or some place of that sort, that is an entirely different proposition, my observation has been that the change of altitude from sea level to Colorado Springs or Colorado Springs to sea level, approximately 6000 feet, doesn't affect the average individual.

Q. Well, Doctor, with reference to this particular case, you made a careful examination of the head, did you not?

A. I examined the head, yes.

Q. And there was some blood in the inner part of the ears, was there not, or traces of blood?

A. That I saw?

[fol. 888] Q. Yes.

A. I can't say that I saw any blood. There was evidence of injury around the side of the head, these wounds which were healed. The dressings had been removed, but I don't recollect any blood.

Q. There was evidence of rather severe injury about the upper portion of the head, was there not?

A. Yes, sir.

Q. From the forehead clear around to the rear, to the base of the skull, was there not?

A. Yes, sir.

Q. And did you ascertain whether or not there was any indication of fracture?

A. Doctor Hanford, as I said before, on the way to Manitou that evening had given me this medical history.

Q. And was the history there that the x-rays disclosed actual fractures of the cranial bone?

A. Yes, sir.

Q. And there was then in your history that you received from the attending physician, a history of actual fractures of the skull?

A. Yes, sir.

Mr. Parsons: That is all.

Mr. Barnes: I think that is all, Doctor.

Mr. Parsons: Now, if your Honor please, as you can readily understand, these matters have approached us in a [fol. 889] manner for which we were somewhat unprepared, and we don't like to excuse these witnesses immediately. I don't know what their plans are. I realize they are from a sister state.

The Court: Well, none of the Colorado witnesses have as yet been excused.

Mr. Parsons: We would like to have them remain in attendance. We will not unduly keep them here.

The Court: All right.

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[fol. 890] Mr. Barnes: We offer in evidence at this time Exhibit 49 containing a photograph of Mr. and Mrs. James, Winona James.

The Court: It will be marked in evidence as Exhibit 49.

Mr. Barnes: We offer in evidence People's offers 52 to 56 inclusive, the photographs of the house in Manitou.

The Court: These photographs will be received in evidence for the purpose of illustration.

Mr. Barnes: May we take this opportunity of showing them to the jury, your Honor?

The Court: Yes.

(Exhibits handed to the jury.)

ALVA E. CUSTER, called as a witness in behalf of the People, being first duly sworn, testified as follows:

The Clerk: State your name, please.

The Witness: Alva E. Custer.

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[fol. 891] Direct examination.

By Mr. Barnes:

Q. Mr. Custer, where do you live?

A. Colorado, Springs, Colorado.

Q. How long have you lived there, sir?

A. I was born there.

Q. You were there in the year 1932?

A. Yes, sir.

Q. Were you there in September and October, 1932?

A. Yes, sir.

Q. Do you recognize the defendant?

A. Yes, sir.

Q. Did you see him in Colorado Springs in September, 1932?

Mr. Clark: Just a moment, that is objected to on the ground that it is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

A. Yes, sir.

Mr. Clark: If your Honor please, we would make that objection to any question that might be asked of this witness concerning anything that was said or done at Colorado Springs, or in 1932. It will not be necessary, I take it, to interpose the objection to each separate question.

[fol. 892] The Court: No. Let the record show that the Court understands that the objection is taken to each question asked this witness, and that unless otherwise indicated, let the record show that in each instance, as to each objection to each question, the objection is overruled. You may proceed.

A. Yes, sir.

By Mr. Barnes:

Q. Do you remember hearing of the incident of an automobile accident on Pike's Peak, in which Mr. and Mrs. James were involved?

A. Yes, he told me of it, himself.

Q. That is Mr. James did?

A. Yes, sir.

Q. Where did that conversation take place?

A. In the lobby of my hotel.

Q. Was Mr. James stopping at the hotel?

A. Yes, sir.

Q. What did he first tell you about it?

A. He told me that they were driving down from the Peak, his wife driving, and she ran off the road. I asked him how he was fortunate enough to not have been hurt himself? He told me he was sitting with the car door open, one foot on the running board, using binoculars, looking out across the mountains at the scenery, and of course when he saw that there was nothing could be done to avert the accident, that he jumped; that Mrs. James attempted to jump, and her feet became entangled in the clutch and brake pedals of the car. She attempted to jump out of the same door that was [fol. 893] already open, the right-hand door, and in so doing, her head being out of the car, and her feet in the car, that the rocks passing by bruised her head, and that he didn't know whether or not she was going to live; that it was very serious.

Q. Did you have a conversation with the defendant at any later time?

A. Yes, sir.

Q. When was the next one that you had, in order?

A. During the period of Mr. James' stay at the hotel we had frequent conversations regarding her condition, and the accident.

Q. When is the next conversation that you recall that you had with him about the subject?

A. I don't recall exactly the time of our next one. He spoke later of his not knowing at the time what to do, at the time of the accident I speak of, whether or not to wait for help to come, that a car might pass by, or to leave her there, and that he was rather afraid to do either one, due to the fact that he had lost his gun, and was afraid of mountain lions.

Q. Did you have any conversation with him about how his wife, Winona, was getting along in the hospital at any time?

A. Yes, I asked as to her health, as I would any case similarly situated, where one of the family were injured, or ill, regularly, every day, I believe.

[fol. 894] Q. From time to time you learned from him the condition of her health, how she was getting along, did you?

A. Yes.

Q. Calling your attention now to a period of time just prior to the time that you heard of the death of Mrs. James in Manitou, after she had been discharged from the hospital, did you see the defendant at some time just prior to that?

A. Prior to her death, or during his stay in the house, which do you mean?

Q. Just prior to her death?

A. Yes, I believe the day of her death I saw him.

Q. What time of day?

A. In the afternoon, if I remember correctly.

Q. Did you have a conversation with him?

A. Yes, we talked. I asked him again as to her condition, and he told me that he regretted leaving her there, that he had come to town regarding hearing from his insurance, and didn't know but what the insurance company had left word at the hotel for him.

Q. Did he say what business he had with the insurance company?

A. That he was applying for a loan. In a former conversation he told me that it was necessary, that they were more or less destitute of funds, due to the accident.

Q. So on this afternoon of the day that Mrs. James died, he mentioned the insurance company, and what else did he say? Did he say anything about leaving her alone?

[fol. 895] Mr. Parson: He just told about that.

A. Yes, I just said that he hesitated about leaving her alone.

By Mr. Barnes:

Q. Did he say why?

A. Yes—well, he had told me why previous to then.

Q. What had he said about that before that?

A. I believe it was the day that Mr. James checked out of the hotel that in a conversation with him he had told me that he was going to take her back to Manitou, that there was no further use of his going into debt, that she was all right, that he could take care of her. He had nothing to do, and was visiting there, and that he was going to take her home, and he had told me that the doctor had cautioned both him and Mrs. James about her stooping over, because of it causing dizziness, and also against the washing of her hair, which might cause infection to the head wound.

Q. And that was about the time he left your hotel?

A. Yes.

Q. And that would be about a week, approximately, roughly, a day or two one way or the other, of the time you heard of her death, prior to the time you heard of her death?

A. Yes. My bellhop, I believe, took him to the hospital and picked up Mrs. James, and took them to Manitou.

Mr. Barnes: Cross examine.

[fol. 896] Cross-examination.

By Mr. Clark:

Q. You will pardon me, sir; I didn't quite get your name?

A. Custer.

Q. You are the proprietor of a hotel at Colorado Springs?

A. I am the manager of this hotel, yes.

Q. And were you such manager during the year 1932?

A. Yes, sir.

Q. You met Mr. James as a guest at that hotel?

A. Yes, sir.

Q. He was registered there, him and his wife, at the time that the wife received the injuries that have been the subject of testimony here?

A. I don't believe his wife was registered there. He was registered there.

Q. And you saw him and had some talk with him the day after the date of the injuries received by his wife?

A. I wouldn't say whether it was the next day, or the second day after.

Q. At any rate, it wasn't the same day, you are sure of that?

A. Yes, sir.

Q. And the conversations that you had were mere casual conversations, all of them, were they not?

A. More or less so, I would say.

Q. That is, they were not for any business purpose?

[fol. 897] A. No.

Q. Nor for the purpose of fixing his statements in regard to any matters that were, or might be the subject of any litigation, either civil or criminal?

A. No, it was an unusual accident, and therefore was

more or less indelible on my mind. There had been no fatalities on the Peak road up to this time, and it still stands, except in a racing car.

Q. So, by reason of the seriousness of the injuries, you felt a natural friendly interest?

A. That was all.

Q. You didn't burden your mind particularly with the details of any of these conversations, did you?

A. Well, there were some questions that arose. As I understand it, I am not allowed to testify as to hearsay.

Q. No, but you did, without going into the substance of anything that you heard, you did hear something which caused you to pay more attention to the circumstances of this matter than you otherwise would have done, is that about it?

A. Yes, sir.

Q. In the course of the conversations don't you remember that Mr. James said that he lost his money, that he had money in a pocketbook on that occasion?

A. I don't recall.

Q. Don't you recall that he said that all the money that he had was lost out of his pocket at the time of the accident?

[fol. 898] A. It seems to me there was something said regarding money, but I am not positive.

Q. Didn't he give that to you as the reason why it was necessary for him to negotiate a loan upon the insurance policy?

A. Yes. During his time there, when Mrs. James' father came, he obtained, I believe, \$100.00 from her father before he left.

Q. And in the course of the conversation; he said, did he not, that by reason of the loss of money, and the additional expense caused by the accident, he thought it was better to move her out of the hospital, and cut down the expenses?

A. Yes, he said that he was as capable of taking care of her, due to her condition at that time, as they were in the hospital.

Q. In fact, he told you, didn't he, that he didn't have the money to keep her in the hospital.

A. That is right.

Q. And was obliged, therefore, to remove her?

A. That is right.

Q. And you have no knowledge that his statement in that respect is not true, have you?

A. No.

Q. Now, at the time of this last conversation that occurred,—did you say on the 31st of September?

[fol. 899] A. The last conversation?

Q. Oh, I beg your pardon. When did you say that last conversation occurred?

A. It was on the same day that Mrs. James was found dead.

Q. You have those two events fixed in your mind as occurring upon the same date?

A. Yes, due to the fact that he had been a guest in the hotel, naturally it would be fixed in my mind when this occurred.

Q. Now, you didn't hear of the death of Mrs. James until a late hour that day, did you?

A. I don't believe I heard until the next morning.

Q. On the day of Mrs. James' death what time of day did you first see Mr. James?

A. I believe it was shortly after lunch time.

Mr. Clark: Will you please read me the last question and answer?

(Question and answer read by the reporter.)

Q. And that was at your hotel in Colorado Springs?

A. Yes.

Q. And Colorado Springs is about how far from Manitou?

A. Six miles.

Q. How long did you have Mr. James under your observation at that time?

A. I believe he was in the hotel at that time in the neighborhood of an hour, or so.

[fol. 900] Q. And according to your best recollection, about what time of day was it when he left the hotel?

A. Well, mid-afternoon.

Q. Three or four o'clock?

A. Yes, that would be what I would think, around 4:00 o'clock.

Q. About 4:00 o'clock?

A. Yes.

Q. Did you see how he left, whether on foot, or by vehicle?

A. No, I didn't.

Q. You did hear him say, in the course of these conversations, that his automobile had been almost totally destroyed in the accident, didn't you?

A. Yes, he had told me that he had sold it then and there, on the spot, on the Peak, for \$25.00, so I assumed that it was a total wreck.

Q. And does Manitou lie uphill from Colorado Springs?

A. Yes.

Q. And so that if one were traveling on foot it would be at least an hour and a half from one place to the other?

A. Yes, if he was traveling on foot.

Mr. Clark: I think that is all.

[fol. 901] Redirect examination.

By Mr. Barnes:

Q. About how far is it from Manitou to Colorado Springs?

Mr. Clark: Six miles, he said.

A. Six miles.

By Mr. Barnes:

Q. You spoke of auto races, at least racing machines on Pike's Peak as the only instance you had known of in which there had been fatalities. Did they have auto races up Pike's Peak?

A. They did until——

Mr. Clark: Just a minute. That is objected to as irrelevant.

The Court: I don't think it is material.

Mr. Barnes: That is all, Mr. Custer.

The Court: We will take our afternoon recess at this time. The jury will heed the admonition heretofore given. We will take a short recess.

(Recess.)

The Court: Let the record show all parties present.

Mr. Barnes: Mrs. Snyder.

[fol. 902] MRS. IRENE F. SNYDER, called as a witness in behalf of the People, being first duly sworn, testified as follows:

The Clerk: State your name, please.

A. Mrs. Irene F. Snyder.

Direct examination.

By Mr. Barnes:

Q. Where do you live, Mrs. Snyder?

A. Colorado Springs, Colorado.

Q. How long have you lived there?

A. 12 years.

Q. Were you living there in September and October, 1932?

A. I was.

Q. What is your business or occupation?

A. I am a bookkeeper at Bethel Hospital.

Q. That is in Colorado Springs?

A. Yes, sir.

Q. Do you know the defendant, Mr. Robert James?

A. Yes, sir.

Q. Did you see him in the month of September, 1932, in Colorado Springs?

A. I did.

Q. Were you acquainted with Mrs. Robert James, or did you see her during her lifetime?

A. No.

Mr. Parsons: What was the answer?

[fol. 903] A. No.

By Mr. Barnes:

Q. What are your duties at the Bethel Hospital?

A. Oh, I had charge of all accounts, and it was my duty to contact with all persons responsible for hospital bills.

Q. Does the hospital, in the regular course of its business, keep as a general part of its business, records of patients entering the hospital?

Mr. Parsons: May the same general objection be made?

The Court: Yes, the same general objection may be made, and the objection is overruled.

By Mr. Barnes:

Q. Does it keep records of the diseases with which the patients are afflicted?

A. Yes, sir.

Q. Does it contain doctors and nurses?

A. Yes, sir.

Q. Is the Bethel Hospital a corporation?

A. Yes, sir.

Q. Are you familiar in the manner in which those records are kept?

A. I am.

Q. The business of the Bethel General Hospital is — that it is necessary or proper to keep those records?

A. Yes, sir.

Q. Could you produce here the record of the hospital with respect to a patient by the name of Nona P. James? [fol. 904] A. Yes.

Q. Could you produce here the records of the hospital with respect to Robert S. James, the defendant?

A. Yes, sir.

Q. Are the records which you have brought here the records of the original entries of those transactions?

A. Yes.

Q. And are those entries made at the time of the transactions, or within a reasonable proximity to the time that the transactions are made?

A. They are made during the patient's stay in the hospital by the doctors and nurses.

Q. Are they made by persons having personal knowledge of the transactions shown thereon?

A. Yes, sir.

Q. I will call your attention to a series of records clipped together with a metal clip, bearing classification "210-N-194 B". What do those numbers represent?

A. They indicate the kind of case, medical or surgical.

Q. And are all the records, with respect to each patient, kept together in one place?

A. Yes, sir.

Q. And are these documents I am now showing you the original records of that hospital, and do they indicate what I asked you in the other questions?

A. Yes.

[fol. 905] Q. And who is this a record of?

A. Nona P. James.

Q. By looking at the records, can you tell us when Nona P. James was admitted to the hospital?

A. September 21st, 1932.

Q. You may hold them in your hand. And when was she discharged?

A. October 8th, 1932.

Q. Do the records disclose what, if any, treatment she received?

A. Yes.

Q. What treatments did she receive?

Mr. Parsons: If your Honor please, we object on the ground that it is heresay. I believe that objection should be made in addition to the objections already interposed to this line of testimony. However, I might state that counsel very kindly handed me these records, and if I might have time to examine them, I can stipulate, and may have no objection to their going in.

Mr. Barnes: Well, I have handed counsel another file, and it might be desirable for him to look at both of them.

Mr. Parsons: May I make some inquiry?

Mr. Barnes: Yes.

By Mr. Parsons:

Q. This record that I hold in my hand, Mrs. Snyder, does this record contain all of the written memoranda, and all of the records contained in your hospital filed pertaining [fol. 906] to the particular case?

A. All with the exception of the x-ray pictures.

Q. All with the exception of the x-ray pictures?

A. Yes, sir.

Q. And did you bring the X-ray pictures of the patient here?

A. Yes, sir.

Mr. Barnes: Yes, she has them here, (handing to counsel).

Mr. Parsons: If your Honor please, we have no objection to either one, or both of the hospital records going in, of course, subject to our general objection. In other words——

The Court: There is no special objection?

Mr. Parsons: There is no special objection. We don't

want to be placed in the position that we waive any of our objections to the testimony given by the witnesses from Colorado.

Mr. Barnes: Then we offer the two records in evidence, one being the record of the hospital with respect to Winona P. James, and the other with respect to the defendant. May we have it likewise understood—I did speak to Mr. Clark about this; I don't know whether I did to you, Mr. Parsons, or not, about taking photostatic copies of those, and withdrawing the originals, and replacing them with photostatic copies?

Mr. Parsons: We will stipulate that you may introduce these records in evidence, and that photostatic copies may be made thereof, and that the photostatic copies may be [fol. 907] filed in lieu thereof, and that these records may be withdrawn and returned to their rightful owner.

Mr. Barnes: Thank you, Mr. Parsons.

The Court: The hospital record of Winona P. James will be marked Exhibit 58 in evidence, and the hospital record of Robert James will be marked Exhibit 59, and let the record show that by this proceeding Mr. Parsons does not in any way waive any of the general objection, but that Mr. Parsons merely consents to the introduction, under the Court's overruling of that objection.

Mr. Parsons: There are some X-rays which we will stipulate may go in under the same circumstances. In other words, we have our same general objection, but to save time, any of these that the witness says are X-rays from her file may go in.

The Court: Pertaining to the case.

Mr. Parsons: Pertaining to the case of Winona P. James.

Mr. Barnes: Yes. I will ask the witness one or two questions; there are two groups of them, and I think it would be better if they were marked separately.

The Court: Will you indicate the number in each group, then?

Mr. Barnes: The number of X-ray pictures in one group is three, as contained in an envelope bearing No. 8609, which we offer as one exhibit, and in the other group, in an envelope bearing No. 8638 there are five X-ray pictures. [fol. 908] The Court: Those will be respectively marked Exhibit 60 and 61.

By Mr. Barnes:

Q. Mrs. Snyder, calling your attention to the envelope, and the X-ray pictures therein contained, which envelope bears the number "8609", and the name "Mrs. James' Skull",—is that "steno"?

A. Stereo.

Q. "Stereo 9-21-32." State whether or not those are the X-ray pictures from the Bethel General Hospital, showing the condition of the head of Mrs. Winona, or Nona P. James?

A. They are.

Q. And these were taken on the date that the envelope bears, 9-21-32?

A. Yes.

Q. Calling your attention now to the other envelope containing five X-ray pictures, which envelope bears a number 8638, and which envelope contains the name "Mrs. Winona James, 10-3-32; head re-examination", state whether or not those X-ray pictures are part of the records of the Bethel General Hospital, and show the pictures taken of the head of Mrs. Winona P. James on the 3rd of October, 1932?

A. Yes.

Mr. Barnes: Then we offer them in evidence, under the stipulation reserving the objections that counsel has indicated to the last group of exhibits.

Mr. Parsons: That is true.

[fol. 909] The Court: Respectively 60 and 61.

Mr. Barnes: 60 being envelope 8609.

Mr. Parsons: What is 61, Mr. Barnes?

Mr. Barnes: 61 is the envelope bearing No. 8638.

Q. Did you have any discussion with Mr. James at any time with respect to the payment of the hospital bill for Mrs. James?

Mr. Parsons: Now just a minute. That is incompetent, irrelevant and immaterial. That certainly can have no bearing upon this matter.

The Court: The subject matter of the conversation might be of little or no materiality, but there might be in that conversation a matter incidental thereto, which might be material. I can't rule on that, whether it is, or is not. Objection overruled.

Mr. Parsons: It is understood, of course, our same general objection applies?

The Court: The same general objection will be understood to apply to all these questions.

Mr. Barnes: I don't want to lead, your Honor, but possibly I can drive at a particular thing, and avoid anything that might be objectionable. I will try it, and unless counsel objects, we will go ahead.

Q. Did you have any discussion with Mr. James at any time about his ability to pay that hospital bill?

A. Yes.

[fol. 910] Mr. Parsons: Now, just a minute. That is incompetent, irrelevant and immaterial.

The Court: That will be overruled.

By Mr. Barnes:

Q. State that conversation.

A. It was either the day after the accident, or the day that Mr. James came to the office, and, of course, I asked him how he would be able to take care of the hospital expense, and he said he had no means of taking care of it at the time, but he was going to negotiate a loan on an insurance policy; that he hoped to be able to pay for it as she left. Mr. James was wearing a lady's diamond ring on the little finger of his right hand, and I tried to get him to give it to me as collateral, but he refused to leave it, stating that that was Mrs. James' engagement ring, and it would break Mrs. James' heart if she could not have it when she was ready to have it, so by the time Mrs. James was ready to leave he hadn't received his loan, so the bill was not paid.

Mr. Barnes: Cross-examine.

Mr. Parsons: May I have that last answer read?

(Answer read by the reporter.)

Cross-examination.

By Mr. Parsons:

Q. It was not paid at the time of her leaving, is that right?
[fol. 911] A. Yes.

Q. Now, do you recall at a time, Mrs. Snyder, during the

stay of Mrs. James in the hospital, that one of the special nurses was laid off, and Mr. James spent considerable time there watching her, or are you familiar with those matters?

A. I would have no way of knowing.

Q. I understood you were just in the office, is that right?

A. Yes.

Q. So you would not have any knowledge of what was going on in the room?

A. I would have knowledge of when the nurse was dismissed.

Q. But you would not know, yourself?

A. No.

Mr. Parsons: That is all.

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G. B. DUNNINGTON, called as a witness in behalf of the People, being first duly sworn, testified as follows:

The Clerk: State your name, please.

A. G. B. Dunnington.

[fol. 912] Direct examination.

By Mr. Barnes:

Q. Speak out loud, please, Mr. Dunnington. What is your business?

A. Barber.

Q. Where is your place of business?

A. 857 South Grand.

Q. Do you know the defendant, Mr. James, here?

A. Yes, sir.

Q. Did you know him in the year 1932?

A. Yes, sir.

Q. Do you remember a case of Mr. James going on a trip to Colorado?

A. Yes, sir.

Q. Prior to that time did you have any negotiations with him with reference to the purchase of a barber shop?

Mr. Parsons: Just a minute. That is objected to as immaterial and incompetent. I cannot, for the life of me, see how this would establish any point.

Mr. Barnes: The same purpose will appear in a moment, your Honor, that appeared with the last witness.

The Court: The objection is overruled.

A. Yes, sir, I did.

By Mr. Barnes:

Q. And had those negotiations been completed when he left?

A. No.

[fol. 913] Q. After he left for Colorado, did you receive a communication from him while he was in Colorado?

A. Yes, sir.

Q. And pursuant to that communication, did you send him any money?

A. Yes, sir.

Mr. Parsons: Just a minute. That is objected to as incompetent, irrelevant and immaterial.

The Court: Overruled.

By Mr. Barnes:

Q. Do you have that communication now?

A. No.

Q. Is it destroyed, or lost?

A. No, I wired the money.

Q. I mean the communication you got?

A. No, I have not.

Q. Is it destroyed, or lost?

A. I didn't destroy it.

Q. Do you know where it is?

A. No.

Q. Well, what was in the communication?

A. Well, he said he needed some money, and that if I would send him some we would go ahead with our deal, and it could be worked out, on the payment on the place.

Q. Was there anything in the communication with reference to the word "accident"?

A. Yes. He told the story about his wife's accident, [fol. 914] and that was why he needed the money.

Q. That was in the communication?

A. Yes, sir.

Q. And pursuant to that did you send any money to Colorado to him?

A. Yes, sir.

Q. How much?

A. I don't know whether it was \$100.00 or \$200.00.

Q. Thereafter, did you see him in Los Angeles?

A. Yes.

Q. Did you have a conversation with him in Los Angeles, after he returned, about the death of his wife in Colorado?

A. Yes, I did.

Q. How many conversations did you have with him about that?

[fol. 915] A. Well, I couldn't tell you the exact number about that.

Q. Well, referring now to an incident of seeing a death certificate, did you have any before you saw that?

A. Yes, sir.

Mr. Parsons: May it be understood——

The Court: As to any testimony connected with the Colorado affair, the same objection and ruling will ride as to the Colorado death.

Mr. Silverman: We will so stipulate.

By Mr. Barnes:

Q. You are a resident of Los Angeles now?

A. Yes, sir.

The Court: You live out on Grand Avenue?

A. Yes, sir, that is my business address.

Mr. Barnes: You have lived there how long, approximately?

A. 10 or 12 years.

Q. Referring to that incident I just mentioned about seeing the death certificate, did you have a conversation sometime before you saw that?

A. Yes.

Q. About the accident?

A. Yes, sir.

Q. State that conversation.

A. Well, he said that he had an accident up on Pikes Peak—they were going on this trip, you know, and he said that he drove up and she drove down, and that coming down he was watching the sun setting through a pair of field [fol. 916] glasses, and he had his foot on the running board,

and I don't remember all the conversation, but this is the summary of it.

Q. Substance of it?

A. Yes, sir.

Q. Go ahead.

A. And he said that the first thing he knew they were over going up the road, so he said he jumped and the car run the rest of the way down. He said he rolled down 200 feet and she rolled down about 500 feet, as I remember. He said he went on the rest of the way down and tried—he didn't know whether she was going to live or die, and he was kind of scared to leave her on account of the wildness of the country up there, and he tried to make her as comfortable as possible and finally went to get help. He figured he hiked about five or six miles to get help for her.

Q. Continue.

A. And he sent for the ambulance. He got help and he went for an ambulance. I think he said they went to the company or the station where, you know, the man in charge was. I don't recall just exactly who it was that he got to help him.

Q. Yes.

A. And he waited for the ambulance and had to wait a long while for the ambulance. He said he had to wait a long while and then they went from there to the hospital, with the lady, Mrs. James.

[fol. 917] Q. Was there any conversation about what occurred after she got out to the hospital?

A. Well, he wanted to save time and he wanted to take care of her, since she had got to that stage where she didn't need so much attention and he thought that he would get somebody to be with her to take care of her and he said he did. Then, he said——

Q. I cannot hear you, sir.

A. He said he went down town one day to the grocery store to attend to some business and he came back and brought those groceries back and brought somebody to carry the groceries. He had so many that he couldn't carry them; and he said he found his wife lying on the floor in the bathroom dead. He said that he supposed she died of brain hemorrhage.

Q. Now, after that incident, did you see a document entitled "Death Certificate" anywhere?

A. Yes, that was several weeks or so later, a couple of weeks later.

Q. And did you look at it?

A. Yes. I had not purchased the shop yet. I was running it for him. He was in and out and naturally, the owner of the place, and how I happened to see it was that he dropped it out of his pocket after pulling a bunch of papers, and I saw it laying on the floor.

Q. It had a name on it?

[fol. 918] A. Yes, sir.

Q. Now, then, after that information, did you return that to him?

A. Yes, sir.

Q. Then, did you have any conversation with him about Mrs. Winona James at the house?

A. Yes, sir, about the circumstances of her death, you mean?

Q. Yes.

A. Yes, I did.

Q. What did he say?

A. Well, I understood from what he told me that she died of an apparent hemorrhage. When I saw the death certificate it set forth that death was from drowning, so I asked him about the real circumstances and he said that she did die from drowning, that the apparent hemorrhage was attributory to what made her fall.

Q. Did he say where she drowned?

A. Well, he said he didn't know, but evidently she had gotten up to go to wash her head in the bathroom and she must have filled the tub up and fainted in the tub. That is the only excuse or reason that he could think of.

Q. Did you have a conversation with him at any time about the subject matters of shoes?

A. Well, he had on the same shoes when he came back that he left in, and he was sitting in the barber chair getting [fol. 919] a shine and I asked him how he failed to get his shoes and his clothes scratched up, and he said, "Well, that's funny, isn't it?" and that was all that was said. We changed the subject.

Cross-examination.

By Mr. Parsons:

Q. Well, you knew that he walked some five or six miles with those shoes, didn't you, down the mountain side? And

you gathered that, did you not, from the conversation with him?

A. That is what he said.

Q. You have sat here in court listening to testimony, have you not, of these witnesses from Colorado?

A. About one hour, yes.

Mr. Barnes: What was that answer?

Mr. Parsons: "About one hour."

Q. Now, this death certificate that he had there in his pocket that you looked at, what did it say in the clause pertaining to the cause of death? What is your best recollection now as to what was therein contained?

A. It was accidental death by drowning.

Q. Accidental death by drowning. Is that what you recall was there?

A. Yes.

Q. And there was nothing else?

[fol. 926] A. Well, there was the name.

Q. Pardon me. I didn't make myself plain. On the question of the cause of death. You have now stated the cause of death was accidental death by drowning, is that it?

A. Yes.

Q. Now, on that subject was there anything else contained in the death certificate, I mean on the subject of the cause of death?

A. I don't recall now.

Q. Do you recall anything in there with reference to contributing factors?

A. No.

Q. You don't recall that being in there?

A. No.

Q. Now, you don't like Mr. James, do you?

A. I don't see why I should dislike him.

Q. Well now, really, you do have some little feeling towards him, don't you?

A. No.

Q. None at all?

A. No.

Q. And you are a competitor of his, are you not?

A. No, sir.

Q. Well, perhaps that wasn't choice language. You operate a barber shop in close proximity to the shop that was operated by Mr. James, do you not?

[fol. 921] A. I do.

Q. How many doors distant?

A. A block and a half.

Q. About a block and a half, is it not?

A. Yes.

Q. Have you ever told any persons in the last year or two that you didn't like Mr. James?

A. Well, I told him.

Q. You told him you didn't like him?

A. Yes.

Q. You and he had some words, didn't you?

A. No.

Q. Well, you told him you didn't like him, didn't you?

A. I didn't like his business ethics, I told him.

Q. You didn't like his way of doing business, is that right?

A. Yes, sir.

Q. And you have told other persons that you didn't like him, haven't you?

A. No, I didn't like his business ethics.

Q. Have you told any person at all, regardless of who it was, other than Mr. James, that you didn't like Mr. James or that in substance?

A. I might have.

Q. You might have?

A. Yes.

[fols. 922-926] Q. The thought at least was in your mind anyway, wasn't it?

A. Yes, sir.

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[fol. 927] C. A. PRIES, called as a witness in behalf of the People, being first duly sworn, testified as follows:

The Clerk: State your name, please.

The Witness: C. A. Pries.

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Mr. Parsons: I think I stated to counsel during the early part of the trial, that I would raise no objection as to these documents being photostats, Your Honor. There might have been some difficulty procuring the originals, so we will stipulate that the photostats may be used in lieu of the original. However, to these documents that counsel has

in his hand and is about to show the witness, we would make the same general objection as was heretofore made.

The Court: I don't know the nature of the testimony. You had better state the objection.

Mr. Parsons: This is a further part of the Colorado incident.

Mr. Barnes: This has to do with the insurance policies.

Mr. Parsons: It arises out of the same transaction and I think the same general objection that has been made would cover it.

[fol. 928] The Court: So far as it relates to the contention of the defendant that anything relating to the Colorado accident is admissible, those objections will ride, the general objections. If there are any specific objections of course, you will announce them.

Mr. Parsons: Yes.

Mr. Barnes:

Q. Mr. Pries, you know Mr. James?

A. I do.

Q. And you knew him in the year 1932?

A. I did.

Q. Were you ever connected with the Prudential Life Insurance Company?

A. Yes, sir.

Q. And were you accustomed to going to Mr. James' barber shop that year?

A. Yes, sir, I was in there frequently, every week.

Q. When you were in there on any occasion, did you ask him if he had any prospects for insurance that he could refer you to so that you could sell them some insurance?

A. That is a natural question I ask everyone.

Q. You asked him among others, did you?

A. I did.

Q. This barber shop was in your territory while you were with the Prudential Life Insurance Company?

A. It was the center of the territory.

Q. On any of these occasions and particularly prior to the [fol. 929] 20th of May, 1932, did you have such a conversation with him?

A. Yes sir, quite frequently.

Q. I show you here a photostat of an insurance policy of the Prudential Insurance Company, and calling your attention to the application that is made a part of it, that is

shown on the inside, have you seen that application on that policy before?

A. Yes sir, I wrote it.

Q. Perhaps the dates appearing in that application will help you refresh your memory as to some of these incidents. If they do, I see no objection to your using them. Prior to the date shown on this application of the 20th of May, 1932, did the defendant tell you that he might have a prospect?

A. Yes, he did.

Q. Approximately how long before the 20th of May, 1932?

A. Possibly three or four weeks or thereabouts.

Q. Had you had any business transactions with Mr. James personally, before the 20th of May, 1932 about insurance?

A. Yes, I had written the two contracts on them each and also one on his mother.

Q. And with respect to those that he took on his own life did you have any conversation with him about what kind of insurance he wanted?

Mr. Parsons: That is immaterial, irrelevant and incompetent.

[fols. 930-931] The Court: Overruled.

A. He preferred endowment at that time.

Q. Is that what he said?

A. He so stipulated.

Q. That is what he told you?

A. Yes, sir.

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[fol. 932] Mr. Williams: There is one other matter, your Honor. Three of the witnesses from Colorado, namely, Jim Rogers, Gerald Rogers, and Mrs. Snyder, feel that it is necessary, for their employer's interests, that they return to Colorado as soon as possible, and they would like to leave by train tonight. Counsel have indicated a desire possibly [fol. 933] to further examine these witnesses. May I suggest that if such an examination is to be made, that it be made today, so that these witnesses may not be held over the week end in Los Angeles? I may say that while the keeping of them entails some expense, I am not putting it on that ground at all, for the reason that I don't think that in a matter of this importance that a small amount of expense one way or the other should cut any figure. I am merely

putting it on the ground that these witnesses are very desirous of getting out tonight if they can, and not losing the two working days that they would lose if they had to stay here over the holiday, and be on the railroad during the working days.

As to the other witnesses, they are willing to stay here until Monday night. Of course, I understand if your Honor so orders, the witnesses will remain here, but I suggest that a method can be worked out so that everybody can be assisted to some extent in the manner I suggest.

Mr. Clark: If your Honor please, I think the Court and counsel know me well enough to know that I have always regarded it as an ethical duty of a lawyer to avoid any unnecessary waste of the time of any witness. We are able to exercise influence over the attendance of witnesses by reason of the fact that we are officers of the Court, and irrespective of any personal feeling we may have, the burden devolves upon us to concern ourselves actively to save the time of any witness, even though he may be an adverse witness, and even though he may be a witness as to whom we may have a personal dislike. I have no certain knowledge that any of these witnesses will be used by the defense, and I have no certain knowledge that they will not, but I do know this, that it would be impossible for us to use them as counsel suggests. They are here now. This phase of the matter has been suddenly thrust upon our attention. It has come to our attention during the midst of the trial when we have many things with which we are deeply concerned, which involved much work, one of which was the question as to the admissibility of any testimony concerning the matters to which their testimony relates.

As far as I, individually, am concerned, I am perfectly prepared to take my place now. Either I am right or wrong. But so far as I am concerned, my own personal inclination would be to leave this subject right where we find it, not to offer any kind of proof concerning it, and let the witnesses go upon their way as soon as they choose. I say that would be my present feeling as far as I am concerned. I am responsible for the course of the trial, and I have had no opportunity to confer with my associates on this subject, except for a hurried consultation when the subject was suggested. I understand that their minds are in such a condition that they may wish to offer some facts which can only be offered by these witnesses. I also understand that the

[fol. 935] Court can receive such testimony only after the prosecution's case has been closed. I have heretofore stated the objection, as well as I know how, to the Court.

The Court: Well, the situation may change, gentlemen. You will have more opportunity during the noon recess to consider the matter. It may be that the problem may be solved. I don't think there is any difficulty, as far as the Court is concerned. However, I want to say this, that if the witnesses are not going to be needed, it would be better to let them go today. If there is any possibility of taking their testimony today, I think that would be appreciated. I want to say very frankly, from what experience I have had in the past, that I realize that not only do counsel have their rights, but they are only doing their duty when they think that the evidence should be given in the regular order. You may proceed with the testimony.

C. A. PRIES, resumes stand.

Direct examination (~~Continued~~).

By Mr. Barnes:

Q. To give you the continuity from yesterday, Mr. Pries, without taking the time to read the transcript to you, briefly we were talking about, as I recall, the subject matter of your being in the insurance business, and this barber shop was in your territory, and you also inquired for prospects, and that one of those inquiries was made of the defendant, [fol. 936] and he told you, possibly three or four weeks prior to the 20th of May, 1936, that he had a prospect for you. Do you recall that?

A. That is correct.

Q. At this time did he tell you that the prospect would be a man or a woman? Or did he mention it?

A. I can't say definitely.

Q. Did you talk with him about the prospect that he had for you, prior to the 20th of May?

A. Yes, just a day or two before, when he told me that that night two days hence would be the night that he would want me out.

Q. Did he say where you would go?

A. He said he would have the prospect at his home, and he also wanted some insurance himself.

Q. A couple of days later did you go to his home?

A. I did, in the evening, about 7:00 o'clock.

Q. Where was Mr. James living at that time?

A. An apartment house at 11th and Western Avenue.

Q. And he had an apartment there?

A. Yes, sir.

Q. Did you go to the apartment?

A. I did.

[fol. 937] Q. And when you went in did you see Mr. James?

A. He opened the door.

Q. Did you meet any other person there?

A. Yes, I met—at that time her name was Miss Wallace.

Q. Did the defendant introduce you to her?

A. He did.

Q. And what conversation took place there with respect to insurance?

A. He stated that he wanted \$5,000.00 on his own life and the policy was written, and the terms discussed and after we were through he suggested that Miss Wallace take a like amount from the same address.

Q. I show you People's Exhibit 49, a picture where there are a number of people standing, two of which are encircled with pen and ink. May I borrow this light, just a moment, Mr. Person? Do you recognize the two people shown in that circle?

~~A. Yes, I do.~~

Q. Who is that?

A. Robert James and his wife, Winona.

Q. And is that the Miss Wallace that you met there on that occasion?

A. Yes, sir.

Q. And what was said, if anything, about insurance on Miss Wallace?

A. Merely that he wanted the same amount for her.

[fol. 938] Q. And did you take an application for Miss Wallace?

A. At the same time.

Q. I have here a photostat that I showed you yesterday. I don't believe this has been marked. May we have this marked?

The Court: The policy and application?

Mr. Barnes: Yes, your Honor.

The Court: 62 for identification. I was under the impres-

sion that there was some statement regarding that. Am I right?

Mr. Barnes: Yes, there was as far as it being a photostat was concerned, that there would be no objection on that ground.

Q. Is that a photostatic copy of the application that you took from Miss Wallace at that time as is shown attached to this photostatic copy of the policy Exhibit 62?

A. It is.

Mr. Parsons: Just a minute; we object on the ground that it is incompetent, irrelevant and immaterial.

The Court: The objection will be overruled.

A. It is.

By Mr. Barnes:

Q. Calling your attention to the name "Nona T. Wallace" was that written in your presence?

A. That was.

Q. And the date that is there, the 20th of May, is that the date that you took the application?

[fol. 939] A. That is the date.

Q. Thereafter did you turn the application in to the Prudential Life Insurance Company?

A. On the day following.

Q. And thereafter was the policy received by you and delivered to any person?

A. It went first to the doctor and issued and then delivered by myself.

Q. To whom did you deliver the policy?

A. I delivered hers to her and his to himself.

Q. Was there anything said about who should be the beneficiary in the policy on the life of Winona Wallace?

A. Mr. James stated—wanted to know or claimed that they were going to be married in a month or two and wanted to know if his name could be inserted as beneficiary at the issuance of the policy. I told him no, that there was no insurable interest, it could not be done.

Q. Was any statement made as to how he could become the beneficiary?

A. Yes, I mentioned that after they were married, provided she consented, that it could be changed.

Q. Thereafter did you hear of the death of the insured, Miss Wallace?

A. Yes.

Q. Did you have occasion to talk with the defendant about the death thereafter?

[fols. 940-950] A. At what time?

Q. At any time. I will pick out some particular time after while. Did you talk with the defendant at any time after her death?

A. Well, when he returned here I filled out the claim papers, got the necessary information and also I might add that I filled out the identity statement, viewing the body at the morgue or at the undertakers.

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[fol. 951] Q. You do recall, however, that shortly after the death of Mrs. James that you did see a certified copy of the proof of death from Colorado?

A. The Coroner's report.

The Court: May I ask a question there?

Mr. Parsons: Surely.

The Court: Was the copy of the Coroner's report filed at Sioux Falls?

A. Yes, it was filed at Sioux Falls.

By Mr. Parsons:

Q. Do you know whether or not it followed the proof of death, or did it go forward subsequent to that?

[fol. 952] A. Well, this is the proof of death here.

Q. Which one? I think I have it.

The Court: Mr. Pries, as a matter of fact, there is a certain form that is used in all cases for proof of death?

A. Yes, sir.

Q. Quite frequently they require the Coroner's findings?

A. In this case it required a Coroner's statement, a certified statement.

By Mr. Parsons:

Q. All of which were obtained, and presented to the Prudential Insurance Company before the claim was paid?

A. That is right.

Q. And did you have occasion to claim—strike that.

Now, after you had learned of the death of Mrs. James, you assisted Mr. James in the proper preparation of the papers, did you not, that were necessary?

A. Yes, sir.

Q. And then it is the common practice for agents to aid those who have insurance, so that they might fill out the proper forms, and give them to the company?

Mr. Barnes: We so stipulate.

By Mr. Parsons:

Q. That is the common practice, is it not?

A. Yes, sir.

Q. In fact, when you learn of the death of a person, upon [fol. 953] whom you have written a policy, you follow them up, do you not, to establish its authority?

A. Agents of the organization do that.

Q. Yes. And that is a true copy, is it not?

A. Of those who are to do that.

Mr. Barnes: Keep your voice up, please.

By Mr. Parsons:

Q. When we get over here, we kind of get into a friendly chat, so keep your voice up. I show you a letter, which appears to be a portion of Exhibit 57, and appears to be a carbon copy of the letter. Will you examine that, please, sir? You have seen that document before, have you not?

A. It was right here in the court.

Q. Well, you had seen it prior to that time?

A. I assisted him in writing it.

Q. Yes. As a matter of fact, you dictated this document, did you not?

The Court: Is that the smaller or larger letter?

Mr. Parsons: I am referring to the larger portion of the letter, dated October 21, 1932, addressed to Dr. Hanford, 316 North Tejon, Colorado Springs, Colorado. You actually dictated this?

A. No, Mr. James and I went next door to a public stenographer and had the letter gotten up.

Q. Between the two of you you prepared the information and gave it to the stenographer, is that right?

[fol. 954] A. Yes, it was necessary to do so.

Q. Well, we won't quarrel about it; I don't want to be rude with you, but if you will just answer my questions we will get along fine. Now, you did aid, with Mr. James, in the preparation of the material, and gave it to the stenographer, and she wrote the letter, is that right?

A. That is correct.

Q. Now, isn't it a fact that you told Mr. James that you would have to have some other copies of the death certificate?

A. The Coroner's report.

Q. The Coroner's report, as you call it?

A. The coroner's report was incomplete, and did not show the inquest, and we wanted to know why.

Q. And you then attempted to obtain that information from Colorado?

A. Mr. James sent this letter for that information.

Q. And you told Mr. James that it would be necessary to obtain that information, did you not?

A. I did.

Q. And that was the reason for sending this letter, was to obtain that information, is that correct?

A. It was the usual procedure.

Q. Well, that was the procedure that followed in this case?

A. Correct.

Q. Now, at the time that you talked with Miss Wallace [fol. 955] about this insurance, she told you that she had carried a policy for some years with one of your competitors, the Kansas City Insurance Company, did she not?

Mr. Barnes: That is objected to as hearsay.

The Court: Overruled. It is apparently part of the same conversation.

Mr. Barnes: If it is, I have no objection.

Mr. Parsons: Well, I asked for it, at the time you talked with Miss Wallace about this insurance, which you proposed to sell her with the company, the Prudential, did she not tell you that she had a policy of insurance with the Kansas City Life Insurance Company?

A. Yes, she stated she had \$1,000.00 with that company.

Q. Well, there is a question in the application, "What other companies do you carry life insurance in?", and that was one of the questions?

A. It should be.

Q. Yes. As a matter of fact, the company will attempt to void a policy, unless they have. All they not?

Mr. Barnes: That is objected to on the ground——

The Court: I think that calls for a conclusion.

Mr. Barnes: Well,——

Mr. Parsons: Well, they void policies, do they not?——

The Court: Same ruling.

Mr. Parsons: —where they haven't received that information?

The Court: It is a conclusion of the witness. It is a [fols. 956-969] question of law whether they can be voided, or not.

Mr. Parsons: This is a question of fact, whether they do or not, whether he knows. All right.

A. I might ask to change my answer to your previous question.

Mr. Parsons: Very well.

A. I knew about it, but whether I knew before or after, I can't state.

Q. As a matter of fact, at the time of this conversation she did tell you that she had an insurance policy, did she not, with another company?

A. I don't remember.

Q. And wasn't it at that time and place that she said to both you and Mr. James that she would much prefer to take out the insurance with the Kansas City Life, because she had a policy with them for some seven or eight years, and is it not a fact that Mr. James then said, "Well, Mr. Pries has been a customer and a friend of mine for years, and I have a policy with them, and I would like to have you take the policy with the Prudential, through my friend, Mr. Pries." In substance was that not said?

A. The latter part of your question was, but the first part, I don't think so.

Q. Now, what part was not?

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[fol. 970] DR. A. F. WAGNER, recalled as a witness in behalf of the People, having been previously sworn, testified as follows:

Cross-examination (Continued):

By Mr. Clark:

Q. Doctor, directing your attention to your statement made here when you were on the stand the other day, as to the cause of death of the woman whom you know as Mary James, I notice that you stated that the cause of death was "drowning, with cellulitis as the contributing cause", as I got your testimony. Is that right?

A. I think it is, yes, sir.

Q. Now, may I say with regard to the cellulitis, whether or not that is of such a character as might cause a person to become dizzy, or faint?

A. Well, a great many things can cause people to become dizzy and faint. No one can say any particular condition, but faintness and dizziness has been present in a great many different diseases and afflictions, and there is no way of knowing whether this condition that she had at the time would not have caused her to be faint and dizzy.

Q. Well, Doctor, in the case of semi-alkaloidal poison, [fol. 971] there is a different sort of effect, is there not?

A. Yes.

Q. And there is in the case of black widow spiders, is there not?

A. Yes.

Q. There is in the case of tarantulas?

A. Well, I don't know much about tarantulas.

Q. Well, now, you spoke of cellulitis being a contributing cause, and you mean by reason of that condition the drowning was shorter, or quicker? Is that about it?

A. I mean that the drowning was so complete that we would put it down as the cause of death without any cellulitis. But with this cellulitis being present, it would naturally have to be added as a contributing cause.

Mr. Clark: Now, if your Honor please, there were two or three questions which I was going to ask the Doctor, and which logically would be a part of our case in chief, but since he is here, and since he is a busy man, I will ask those questions now.

The Court: If no specific objection is offered, you may do so.

By Mr. Clark:

Q. Doctor, what are the lymphatics?

A. They are matters that go through the tissues, and that go through the blood and pick up the waste material.

Q. Do they consist of a network through which the blood flows?

[fols. 972-989] A. Yes, sir.

Q. And they extend to all parts of the body?

A. Yes, they extend to all parts of the body.

Mr. Clark: Now, I think I am through with the Doctor, your Honor.

Mr. Barnes: No questions.

Mr. Clark: Did I understand that Dr. Boehme is here?

Mr. Barnes: Yes, he is here.

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[fol. 990] STIPULATION RE PEOPLE'S EXHIBIT 4

Mr. Williams: If your Honor please, referring to the People's Exhibit No. 4 for identification, which consists of envelope and letter that has been testified to as having been found in the premises at 1329 West Verdugo Boulevard in the afternoon when the body was discovered, counsel has offered kindly to stipulate that the handwriting which appears in pencil on the envelope and the letter itself were in the handwriting of Mary James, the deceased. We accept that stipulation. Is that right, Mr. Parsons?

Mr. Parsons: That is true; so stipulated.

Mr. Williams: At this time we offer in evidence People's Exhibit 4 for identification.

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[fol. 991] Mr. Williams: Well, I will read this if I can. It reads this way: "Dear sis: Just a line this morning to let you know I am pretty sick." Is that sick?

A Juror: Is that "sick"?

Mr. Parsons: The jurors cannot hear you. Sit in the witness box.

Mr. Williams: "Dear Sis: Just a line this morning to

let you know I am pretty sick. My leg is all swollen. Something bit me while watering my flowers this morning. I cut my toe yesterday, and having lots of bad luck. It is ole blue Monday, but my daddy will be home early tonight and he takes good care of me. Be sure and write me soon. I will let you know how I get along."

[fol. 992] On the envelope, on the front, is "Mrs. R. H. Stewart, Las Vegas, Nevada, P. O. Box 1225", and on the back, "From Mrs. R. S. James, 522 West 8th Street, Los Angeles."

Now, may I show these to the jurors, if your Honor please?

The Court: You may do so.

(Letter and envelope examined by the jury.)

Mr. Williams: Call Madge Reed.

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[fol. 993]

MOTION TO STRIKE

Mr. Clark: If your Honor please, at this time I wish to move to strike out all of the testimony of the witness J. D. Rogers, upon the ground that the same is irrelevant to all of the issues in this case, and is incompetent for the purpose of establishing any fact herein. There will be a number of similar motions. I hope not to indulge in any extended argument. I do wish to point out clearly and unmistakably, the grounds upon which all of these motions are based. After some brief argument upon this one, the principles and authorities will have been called to your Honor's attention, and there will be no occasion for any discussion of the evidence. This evidence has been received by the Court, over our objection, upon the ground that it is, although evidence of another offense, competent to establish facts at issue here; competent, I think the Court suggested, for the dual purpose of showing motive for the commission of the second murder, and showing a common plan and system animating and underlying both murders. That assumes, of course, that the Colorado murder was a murder. And, as I understand, and have pointed out in argument heretofore, and I believe I have shown your Honor authorities which sustain the same, that when counsel attempt to prove another similar offense, they are not

[fol. 994] permitted to prove merely circumstances, or more or less suspicion, or circumstances which might tend, in a greater or less degree, to show that another offense of the same class was committed, but that their evidence must be specific and complete, so as to establish all of the elements of the other alleged offense.

If this defendant were upon trial for a murder committed in Colorado, he would be confronted with evidence which is wholly circumstantial. The rule in regard to such evidence is so familiar, and your Honor has stated it so many times, that the citation of what the rule is would be entirely superfluous. Where circumstantial evidence is relied upon, the circumstances must be such as not merely possible that the crime was committed, but there must be such testimony that is inconsistent with any reasonable hypothesis against guilt.

Mr. Barnes: Against innocence.

Mr. Clark: Yes, against innocence. This is the burden which the prosecution assumed in endeavoring to introduce this line of evidence which has now taken some days to produce, and which is of a character highly prejudicial to this defendant.

At the conclusion of their evidence we find a series of circumstances which neither singly or collectively are incompatible with the complete innocence of the defendant. They find an automobile injured on the road coming down from Pike's Peak, and some other automobiles have been injured on that road. They find some footprints, after nine men besides this defendant had been running over the ground. They find some bloodstains on the outside of the car, and they find similar conditions in the car. They find a hammer in the car which might have been used for the purpose — making a path. The defendant has never been interrogated as to whether he made the footprints, or not, and there is no evidence that the footprints corresponded with the size of the defendant's foot, and the defendant was not interrogated as to knowledge concerning the bloodstains, and was not interrogated as to how the hammer came to be there, and the first explanation was incomplete.

The wife received severe injuries in the head, while going down the road of the Rocky Mountains, and the evidence, both oral and photographically, shows that the term "Rocky" is appropriate to that particular region. It is

largely a mass of rocks. The witness by whom these facts are proved saw so little at the time of the circumstances that he made no report, and in reporting the matter to his employers, reported it as an accident.

That, in brief, is the testimony of the first Mr. Rogers. The testimony of the second Mr. Rogers is to the effect that he was employed at Leonard's Grocery Store, at the town of Manitou, where the defendant had temporarily taken his residence for reasons disclosed by another of these witnesses. The store was located across the street from the [fol. 996] postoffice of that town. The town is a summer resort, and the summer season was practically over. The defendant, on more than one occasion, after going to the postoffice for his mail, came over to the store and ordered his groceries. He was living a little ways from the store on the top of the hill.

The boy went with the accused to the house, made the delivery, entered through the kitchen, and was called in the bathroom where the body of Mrs. James was lying in the bath tub. The two carried her in to the bedroom. The boy, in giving his testimony, testified that the door between the bathroom and the kitchen was closed, and the testimony caused some trepidation upon my part, for I understood him that it was the door between the bedroom and the bathroom that was closed, and that would be a circumstance of some importance. Upon his cross examination, however, it developed that when carrying her into the bedroom he was the one who first passed through the passage, separating the bedroom from the bathroom. The water in which she was was filled with soap, and the body was slippery. She was a large woman, and he kept hold of her body until he passed into the living room, proving that the door between the bedroom and the bathroom, therefore, was open. That is a necessary consequence of that testimony.

The witness, the proprietor or manager of the hotel [fol. 997] at Colorado Springs, had a conversation with this defendant as late as the hour of 4:00 o'clock on the afternoon that the body was discovered, a circumstance to which I attach great importance, because the defendant had no automobile. It is not shown that he had any other vehicle, or vehicular means of conveyance. The presumption of innocence implies all of the facts necessary to in-

nocence. A fact not proved is presumed, in accordance with that presumption, not to — existed, and there being no proof, the presumption of innocence compels the conclusion that he had no means of covering that six miles, except by his own personal means of locomotion, that is, by his own feet. It would have therefore been a physical impossibility for him to have been at the house at any time when we could assume that the woman met her death.

There the water in the tub, your Honor will remember, was still luke warm when the boy helped remove her body. The body was still warm. The appearance of life was still there to the extent that there was some discussion between the boy and Mr. James as to whether death had ensued.

I am not going to dwell much upon the conversations that this hotel man related, although it does appear that in those conversations Mr. James gave many explanations reasonable, plausible, and uncontradicted. He removed his wife from the hospital under the spur of necessity. His money had been lost out of his pocket in the accident. He [fol. 998] was unable to pay the bills for her care. He went to Colorado Springs upon the occasion that the last conversation was held for the express purpose of obtaining money by reason of an insurance policy upon which a loan could be made, as I understand, during the life of the insured.

There remains only to be mentioned the testimony of Miss Yarnell, whose most significant fact, as it appears detached, and perhaps the most prejudicial, was the defendant kissing, and offering to kiss her upon occasions during his wife's lifetime, but that is to be interpreted in the light of the conduct of Miss Yarnell, herself, who, at his solicitation, wrote a letter to the insurance company with regard to the very insurance that is the subject of inquiry in connection with her death. That certainly shows conduct on Miss Yarnell's part that she believed the death was the result of murder, and the letter was an attempt to perpetrate a fraud upon the insurance company. That circumstance, it seems to me, of itself, more than all of the other testimony of Miss Yarnell, characterizes the circumstances known to her as being purely innocent, and as to the improper advances made toward her, your Honor has referred me to certain cases in which a person entered into a definite relation, not a mere advance, not a mere detached act, but the entering into a continuous relation shortly

after the death of the wife; that has been received as evidence, the Court saying that such conduct tended to show [fol. 999] the lack of love for the wife. Miss Yarnell, according to her testimony, kissed the defendant goodbye in public upon the occasion when he left the place where he was then residing, and that public kiss is a part of the evidence, a part of the chain of circumstances have just as much to be considered by the jury as the unfavorable circumstances.

The Court: I don't recall that testimony, Mr. Clark.

Mr. Clark: It was the very last thing that Miss Yarnell testified to when she was cross examined by Mr. Parsons.

Mr. Barnes: I have a recollection of it.

Mr. Parsons: I asked her about it, at the depot.

Mr. Barnes: At the depot.

The Court: Well, I didn't recall it in that same form. You may go ahead, Mr. Clark. I think we can find it.

Mr. Clark: I have now, your Honor, only to call your Honor's attention to the case of *People vs. Staples*, 149 California, 405, with which your Honor is already familiar, and the later and rather interesting case that I think your Honor has frequently considered, of *People vs. Robbins*, 171 Cal. 466. The latter case is a case in which circumstantial evidence was held insufficient to support the testimony of an accomplice. The former case was a case in which the circumstances were held wholly insufficient to support a conviction of murder of the defendant's wife, in a case similar to this, in which, however, the theory was that the wife had been killed by means of poison. I [fol. 1000] am not going to take the time of your Honor to draw a parallel between the set of circumstances in the one case, and this.

The Court: I have found the testimony in the transcript. The testimony is that he kissed her goodbye, not that she kissed him.

Mr. Clark: It seems to me that it is a distinction without a difference.

The Court: I think it makes quite a lot of difference. I think there are many occasions when women are kissed by men where they would not have kissed the men who kissed them. I might take judicial notice of that.

Mr. Clark: I have had no such unhappy experience.

The Court: Maybe you never tried.

Mr. Clark: Maybe my efforts have been governed with sound judgment.

Mr. Silverman: Mr. Clark, the Court said he would take judicial notice of the kissing.

Mr. Clark: Well, at any rate, the concluding thing I have to say upon this motion is that it is easy to draw a parallel between this case and the circumstances in each of those. To my mind the analogy is almost, if not quite, perfect. If this defendant were upon trial for the murder of that wife on the evidence that is before your Honor, and a verdict of conviction was returned, I would entertain not the slightest doubt that the evidence was wholly insufficient to sustain the conviction. That is my personal opinion of [fol. 1001] the law, which has proved to be wrong many times, and may be at this time. That, however, is the reason for the motion.

In the case in 114 California, to which I called your Honor's attention—

Mr. Barnes: Is that the Staples case?

Mr. Clark: No, this is the Whiteman case, the case that I cited the other day. People vs. Whiteman, 114 California, 338. In this case, with regard to this class of evidence, and with regard to the objection which, as a matter of precaution I made, or tried to make when this evidence was offered, namely, that the offer was an offer to show detached circumstances merely—I think I am in error as to the case in which the thing was held, but in one of the cases I presented to your Honor there, it was held that it could only be ascertained that a complete crime could not be proved after the evidence was all in, and that the real remedy was a motion to strike. Having that warning, it has seemed necessary to make the motion at this time. I think I have covered the matter fully.

Mr. Williams: May I say one other thing? I stated a few moments ago, in response to Mr. Clark's question, that the evidence which we had offered was all of the evidence which we intended to offer. I might say that in making that statement I overlooked the fact that we might ask Dr. Decker to explain what is shown in the x-ray pictures which are already in evidence.

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[fol. 1002] The Court: I might suggest this idea, just in passing, Mr. Clark, and that is an interesting question which

is allied to the motion, is as to whether in those cases in which there is evidence of other offenses, whether those other offenses must be proved beyond a reasonable doubt, and with the same degree of certainty as the instant case on trial?

Mr. Clark: There seems to be authority to that effect, your Honor.

The Court: I am just merely suggesting that as a subject of argument by both sides.

Mr. Williams: May I make a suggestion along that line for consideration? That is, that I think there is a tendency on the part of every one to lose sight of the real point of [fols. 1003-1005] admissibility of the evidence.

The Court: Do not misunderstand me, Mr. Williams. I tried to conceal any thought that I might have on the subject.

[fol. 1006] MRS MADGE REED, called as a witness in behalf of the People, being first duly sworn, testified as follows:

The Clerk: State your name, please.

The Witness: Mrs. Madge Reed.

Direct examination.

By Mr. Williams:

Q. Mrs. Reed, will you kindly speak as loudly as you can so that all of counsel, and the members of the jury may clearly hear what you say?

A. Yes, sir.

Q. Do you know the defendant, Robert S. James?

A. Yes, sir.

Q. When did you first meet him?

A. On the 10th of July.

Q. What year?

A. 1935.

Q. Where did you meet him?

A. At the Italian Village.

Mr. Parsons: What was that answer, please?

A. At the Italian Village.

By Mr. Williams:

Q. Was it day or night that you met him there?

A. It was in the afternoon.

Q. And did you stay in his company for some length of time?

[fol. 1007] A. My girl friend and I had a few drinks with him at the village.

.

By Mr. Williams:

Q. Did you do anything besides have drinks with the defendant at the Italian Village?

A. I talked to him.

Mr. Clark: I am not able to hear the answer of the witness.

A. I talked to him there.

By Mr. Williams:

Q. How long did you stay at the Italian Village with him?

Mr. Clark: That is objected to as immaterial and irrelevant.

The Court: Overruled.

A. Oh, I imagine until about 5 o'clock.

By Mr. Williams:

Q. And from there—did you leave the Italian Village in company with the defendant?

Mr. Parsons: That is objected to on the ground that it is incompetent, irrelevant and immaterial.

The Court: The same ruling.

[fol. 1008] A. He was quite intoxicated and he asked my girl friend and I to drive him home.

By Mr. Williams:

Q. Did you have any conversation as to where he lived?

A. He told us that he was—

Mr. Parsons: That is objected to on the same ground.

The Court: Just a moment—

A. And visiting—

The Court: Objection overruled.

Mr. Williams: How far did we get?

A. He told us that he was visiting from Kansas City and was out here on a vacation and that he lived with his sister on Verdugo Road.

Q. Where did you go from the Italian Village?

A. My girl friend drove to Western and I drove him home.

Q. And when you got to the house on Verdugo Road, what did you do?

Mr. Parsons: That is objected to upon the ground it is immaterial and irrelevant.

The Court: Overruled.

A. We went into the house and he went to the bedroom and said he was going to sleep and I worried how he was going——

By Mr. Williams:

Q. Never mind about how you were worried. Just tell us what you did.

Mr. Clark: The same objection.

The Court: Overruled.

[fol. 1009] A. He told me to take the car and go out and get my dinner and maybe he would be able to feel better and return me to town, and I did that and I came back and he was still sleeping, and in a short while, someone came in the door.

Q. A man or a woman?

A. A woman who hollered "Oh, honey"——

Mr. Clark: Just a minute; that is hearsay.

The Court: This is hearsay.

A. Well, it was his wife.

Mr. Williams: Well, we will agree to strike that out at this time.

The Court: It may be stricken.

By Mr. Williams:

Q. Now, this lady that came in there, was there for some time, was she?

A. She wasn't there when I arrived out there.

Q. I mean after she arrived there, did she stay there for some time?

A. She took me back to the mountain road where I took a bus home.

Q. Now, did you see the defendant again after that?

A. Not until the 11th of August.

Q. Well, did you talk with him again?

Mr. Clark: What was the last answer?

Mr. Williams: Not until the 11th of August.

Q. Did you talk with him again?

The Court: You can answer that "yes" or "no".

[fol. 1010] A. By phone.

By Mr. Williams:

Q. When did you next talk to him?

Mr. Parsons: That is objected to on the ground that it is irrelevant.

The Court: Overruled.

A. I beg your pardon?

By Mr. Williams:

Q. When did you talk to him the next time after the 10th of July?

A. On numerous occasions.

Q. When was the first time? I am talking about telephone conversations.

A. Well, he called me on numerous occasions and the last time was the Saturday before his wife's death, but the first time he called me was the day following the 10th of July.

Q. What did you say over the telephone or what did he say over the telephone?

Mr. Clark: That is objected to on the ground it is irrelevant.

The Court: Overruled.

A. He apologized—

By Mr. Williams:

Q. Just tell us what he said.

A. Oh, he apologized for taking me out there to his place and asked me to go to San Diego with him.

Q. And what else did he say, if anything?

Mr. Clark: That is objected to upon the ground that it is irrelevant and immaterial.

The Court: Overruled.

[fol. 1011] By Mr. Williams:

Q. Did he say anything on the subject of the lady who came into the house?

A. Yes, he said that was his wife, and that he didn't think she would be home because she was at a convention in Long Beach and would not return for three days.

Q. Did he call you again after that?

A. Yes, sir.

Q. How many times did he call you before the 3rd of August?

Mr. Parsons: We object to it on the ground that it is immaterial and irrelevant.

The Court: Overruled.

By Mr. Barnes:

Q. Was it more than one time?

A. Yes.

Mr. Parsons: That is objected to on the same ground.

The Court: The same ruling.

By Mr. Williams:

Q. What did he say to you on these occasions when he called?

A. He wanted to go out with me.

Mr. Clark: I object to that as immaterial and irrelevant.

The Court: Overruled.

By Mr. Williams:

Q. Now, did he call you on three occasions?

A. Well, the Saturday before his wife's death if that was the date of her death.

Mr. Clark: Well, I will stipulate that was the date.

By Mr. Williams:

Q. What did he say when he called you on the 3rd of [fol. 1012] August?

Mr. Clark: That is objected to on the ground that it is irrelevant and immaterial, as to what he said.

The Court: Overruled.

A. He said to get a girl friend and the four of us would go out together.

Q. Did you hear from him after that?

A. No, not until the 11th of August.

Q. And on the 11th of August did you have a telephone conversation with him?

A. Yes, he called me and asked me——

Mr. Clark: Just a moment.

The Court: The same objection will be assumed as being made and overruled.

Mr. Clark: All right.

By Mr. Williams:

Q. What did he say on the 11th of August?

A. He asked me if I had been reading in the papers about his wife's death and I replied that I had and he said he wanted to talk to me about what was in the papers and wanted to come up and I said he could not, but he came up anyway.

Q. Where did he come?

A. 525 South Corondolet, to my apartment.

Q. Did you and he have a conversation in your apartment?

A. Yes, sir.

Q. What did he say and what did you say?

Mr. Clark: That is objected to upon the ground that it is [fol. 1013] irrelevant and immaterial.

The Court: Overruled.

A. Well, he told me about his wife and how they were trying to frame him on the case; and he said he didn't believe in mourning, and that as long as his wife was dead that he would collect the insurance and he would marry me and take me north.

By Mr. Williams:

Q. Was that the substance of what he said before you left the apartment house?

A. Yes, sir.

Q. And then did you leave the apartment house?

A. Yes, sir.

Q. And where did you go?

A. We went for a ride.

Q. In the car?

A. In his automobile.

Q. While you were riding, did you have any further conversation with him?

A. Yes.

Q. What was that conversation?

Mr. Clark: That is objected to on the ground that it is irrelevant and immaterial.

The Court: Overruled.

A. Well, he told me that if he was indicted, he wanted to spring me as a surprise witness, and he would give me \$2,000.00 if I would testify.

[fol. 1014] By Mr. Williams:

Q. Did he tell you what he wanted you to testify to?

A. Yes, sir.

Q. Relate the conversation.

A. He said that he wanted me to testify that I had met he and his wife five weeks previous at the Italian Village at 9 o'clock in the evening and that to say on the morning of her death I was out for a ride and seen her standing on the porch and that she explained that she was not feeling well and that she had on yellow pajamas and she laid in the hammock and mentioned that she had a sore on her leg.

The Court: I didn't catch that.

(Answer read by the reporter.)

Mr. Clark: I wonder if you will have the witness speak up.

The Court: Speak a little slower, please.

By Mr. Williams:

Q. Was that the extent of the conversation that you had in the automobile?

A. He talked about many things.

Q. From the automobile where did you go?

A. Towards Hermosa Beach.

Q. Where did you go?

A. He asked me to register at a hotel.

Mr. Clark: Just one moment; I move to strike that out on the ground that it is irrelevant and immaterial.

The Court: Motion denied.

By Mr. Williams:

Q. Did you do that?

[fol. 1015] A. Yes.

Mr. Clark: That is objected to as immaterial and irrelevant.

By Mr. Williams:

Q. And what did you do after you registered?

Mr. Clark: The same objection.

The Court: Overruled.

A. Talked.

Q. Did you go to a room in the hotel?

A. Yes.

Q. While you were there did you have a conversation with the defendant?

A. Yes.

.

Q. Just tell us what he said there.

[fol. 1016] A. Well, he said that they were trying to frame him on his wife's death, and talked over the case about me being a witness for him. He talked about insurance, what a marvelous thing it was to have, and that they were trying to frame him on that point.

Q. Now, did you spend the rest of the night there at the hotel?

A. Yes.

Q. And in the morning did you return to the City of Los Angeles?

A. Yes, sir.

Q. With the defendant?

A. Yes, sir.

Q. Did you have any conversation with him on the way in?

A. Yes, he had me take notes on a card so that I would remember to say when I met him and his wife, and he gave me Mr. Silverman's name and phone number.

Q. And after that, what did you do?

A. I came back to town.

Mr. Parsons: Pardon me, if your Honor please, I don't want to interrupt. May I have the last answer read?

(Answer read by the reporter.)

Mr. Parsons: The answer just before that, if I might, your Honor?

(Questions and answers read by the reporter.)

[fol. 1017] Mr. Williams: Now, did you make the notes on the card in his presence?

A. Yes sir, in his presence and he gave me \$60.00 to show that he really meant business, and I was to get the \$2,000.00 whether I testified or not.

Q. And then you left him, did you?

A. Yes, I took a taxi home.

Q. And now, I will show you a card which I will ask your Honor's permission to mark with a number for identification.

The Court: 73.

Mr. Williams: 73 for identification and ask you to examine that and state whether you recognize that.

A. Yes.

Q. The words that are written in there in ink, that is, the names and addresses, are those in your handwriting?

A. Yes, sir.

Q. Is that the registration card at the hotel where you registered the night you were there with Mr. James?

A. It is.

Q. That is your handwriting, is it?

A. Yes, sir.

Mr. Williams: We offer it in evidence, if your Honor please.

Mr. Clark: To which we object on the ground that it is incompetent.

The Court: May I see the card, Mr. Williams?

[fol. 1018] (Mr. Williams hands card to the Court.)

The Court: Objection overruled. Mark it 73 in evidence.

Mr. Williams: May I approach the bench with counsel?

The Court: Yes.

(Discussion at bench.)

The Court: Let the record show merely this, that an exhibit shown me by Mr. Williams in the presence of Mr.

Parsons was shown together with the comment that someone had written something on the exhibit after it came into Mr. Williams' possession that didn't belong there. The suggestion was made by the Court that this be erased.

Mr. Williams: May I have this card concerning which your Honor has just made the statement marked as People's Exhibit 74 for identification?

The Court: So marked.

By Mr. Williams:

Q. I will show you now a card, People's Exhibit No. 74 for identification and ask you whether you recognize that.

A. That is the card I took the notes on on the way back to town.

Q. And the portion which is written on this card in handwriting, in ink, was written by whom?

A. By myself.

Mr. Williams: This is offered in evidence at this time, if your Honor please.

Mr. Parsons: We object to it as incompetent, irrelevant [fol. 1019] and immaterial and too remote.

The Court: Objection overruled.

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Cross-examination.

By Mr. Parsons:

Q. It is Mrs. Reed, is it not?

A. Yes, sir.

Q. And when this occurrence took place you lived at 525 South Corondolet here in the city?

A. Yes, sir.

Q. And you state that you met Mr. James one afternoon at the Italian Village?

A. Yes, sir.

Q. That is the establishment on Fourth Street just off of Hill?

A. It is on Eighth Street.

Q. Where on Eighth?

A. Between Hill and the next street.

Q. And at about what time of the day was it that you met him?

A. Sometime during the afternoon.

[fol. 1020] Q. Sometime during the afternoon?

A. I went down for lunch, about 1:30. It was shortly after that.

Q. About 1:30, or 2:00 o'clock?

A. A little later, perhaps.

Q. Now, Mrs. Reed, you had a girl friend with you, did you?

A. Yes, sir.

Q. And what was her name, please?

A. I promised her not to tell and I am keeping my promise.

Q. I am afraid that we must ask for her name.

Your Honor, may we have the witness answer the question? I think we are entitled to know the name.

The Court: I think you are entitled to know the name of the person if you insist on it.

Mr. Parsons: We insist on it.

The Court: You may answer.

A. Merryl Barrow.

Mr. Parsons: How do you spell it?

A. M-e-r-r-y-l B-a-r-r-o-w.

Q. Where did she live?

A. I don't know her right address.

Q. Where did she live at that time?

A. Some place near Western.

Q. Do you know on what street?

[fol. 1021] A. No.

Q. Do you have any idea what street it was?

A. I really haven't.

Q. Did you meet her there by appointment?

A. Yes.

Q. And how did you communicate with her to make the appointment?

A. By telephone.

Q. And what was her telephone number?

A. I have forgotten.

Q. You have?

A. Yes.

Q. And do you have any memorandum of it?

A. I have it at home.

Q. You haven't lost it or destroyed it?

A. I don't believe so.

Q. You are quite sure that it is there now?

A. I couldn't say positively.

Q. Do you know where her husband is employed?

A. No.

Q. How long had you known her?

A. I had met her at the Village once before. We eat at the same table.

— Q. That is the only time that you had met her?

A. Yes.

Q. Now, you met this man and you had a few drinks, is [fol. 1022] that right?

A. She met him first and he wanted an introduction and she brought him over to my table.

Q. And you were introduced?

A. Yes, sir.

Q. And had a few drinks?

A. Yes.

Q. And some time later in the afternoon, Mr. James asked you to drive him out home, is that right?

A. Yes, he was too intoxicated to drive himself.

Q. Well, did he tell you that he felt he had had a little too much to drink and it would be necessary for someone else to drive him home, is that it?

A. Yes.

Q. And then you went out to his home, did you?

A. He said he was living with his sister on Verdugo Road.

Mr. Parsons: I move to strike it out as not responsive.

The Court: The answer will be stricken.

Mr. Parsons: Did you then go out to some address at La Canada?

A. Yes.

Q. Do you know the address?

A. No.

Q. How is that?

A. I don't know the address right now.

Q. You don't know it right now?

[fol. 1023] A. No.

Q. Have you been there since this occurrence?

A. Never.

Q. When you reached there you went in the house and you were somewhat alarmed over not having had your luncheon, and told him that?

A. Yes.

Q. And he gave you a dollar and told you to take the car and go out and get something to eat, is that it?

A. Yes, sir.

Q. And when you returned you found him sound asleep, is that right?

A. Yes, sir.

Q. And then some time later in the afternoon a lady came to the house, is that right?

A. Yes.

Q. And she took you down to the street car, is that right?

A. That is right.

Q. And now, you state that you had a conversation with Mr. James on August 3rd, as you stated, the Saturday before you learned of the death of Mrs. James, is that right?

A. That is right.

Q. And that was in the evening, that conversation, was it not?

A. Yes, sir.

[fol. 1024] Q. Was it along about 6:00 or 7:00 o'clock?

A. I wouldn't know what time it was.

Q. Well now, can you give us your best judgment about what time?

A. In the evening?

Q. Well, about what time?

A. I couldn't even guess.

Q. Well, was it near the dinner hour or 6:00 or 7:00?

A. Around there.

Q. Around 6:00 or 7:00. And then you learned of the death of Mrs. James and you heard from him sometime after that, is that right?

A. On the 11th of August.

Q. And did you make any memorandum of that, the 11th of August?

A. Of course.

Q. Did you write that down in a diary or something?

A. No.

Q. You just made a mental note of it?

A. Yes, sir.

Q. And where did you see him on the 11th of August?

A. He came to my place.

Q. He came to your place?

A. Yes.

Q. To your apartment there on Corondolet?

A. Yes, sir.

[fol. 1025] Q. What apartment was that?

A. 525.

Q. What number?

A. 525.

Q. 525, thank you. And he was there how long?

A. Oh, perhaps an hour.

Q. And then you and he went for a ride?

A. Yes, sir.

Q. Is that right?

A. Yes.

Q. You went down to Hermosa Beach, is that right?

A. Yes.

Q. And this card, Exhibit 73, do I understand that the signature thereon contained, "Mr. and Mrs. Joseph Wright, San Francisco, California", was the name and address put down by you?

A. At his instructions.

Q. But in any event you did write it, didn't you?

A. Yes, sir.

Q. And was that any new experience for you?

Mr. Williams: Objected to as immaterial, not proper cross-examination.

The Court: Objection sustained as to the form of the question.

Mr. Parsons: You had done that before, had you not?

A. I had not.

[fol. 1026] Q. You are sure of that, are you?

A. I am positive.

Q. And this card was in what hotel?

A. Hermosa.

Q. In the Hermosa Hotel?

A. At Hermosa Beach.

Q. At Hermosa Beach. Had you ever been there in that establishment before?

A. I had not.

Q. Now, when you were asked to write this registration at the hotel you did it, did you not?

A. Yes, sir.

Q. And you and Mr. James were shown to a room, were you?

A. Yes.

Mr. Parsons: May we take the afternoon recess at this time, your Honor?

The Court: Yes, we will take our afternoon recess at this time. The jury will heed the admonition heretofore given.

(Recess.)

(After recess.)

The Court: The record may show all parties present. Mrs. Reed may resume the stand.

Mr. Clark: I may state to your Honor that the case that I spoke about is Criminal number 2782, decided by the District Court of Appeals of this district.

The Court: I tried to find something that would perhaps [fol. 1027] resemble the situation, but could not find anything recent. Will you proceed with the cross-examination?

Cross-examination (Continued).

By Mr. Parsons:

Q. Now, Mrs. Reed, after you registered, you people were shown up to the room, is that right, at the hotel?

A. Yes.

Q. And this was at about what time of the evening?

A. I couldn't say.

Q. You couldn't say?

A. It was approximately 8:00 or 9:00.

Q. About 8:00 or 9:00 o'clock in the evening?

A. Approximately; I couldn't say for sure.

Q. Well, was it at least after the dinner hour?

A. I believe it was after the dinner hour, yes.

Q. And you had driven directly from Los Angeles down to Hermosa Beach, had you?

A. I stopped several times and made phone calls.

Q. And in any event, in an hour and a half or two, you reached Hermosa Beach, is that right?

A. I don't know the exact time.

Q. Well, when you registered at the hotel did you have any baggage?

A. No.

Q. Any suitcase?

A. No.

[fol. 1028] Q. Nor over night bags?

A. No.

Q. What was paid for compensation for use of the room, do you recall that?

A. I don't know.

Q. Well, did you observe whether or not any money was passed?

A. I imagine he paid for the room.

Q. The question is, did you see it done?

A. I don't recall.

Q. You don't recall?

A. I wasn't watching every move.

Q. You were watching every move?

A. I say, I wasn't watching every move.

Q. Oh, you weren't watching every move. You were paying little or not attention to it, is that right?

A. (Witness nods head.)

Q. You will have to speak out audibly so that the reporter can get it.

A. Yes.

Q. Did you observe whether it was a man or a woman upon the desk at the hotel?

A. It was a man.

Q. Can you give us some idea of how old he was?

A. Middle aged.

Q. About middle age. Did he show you folks up to your [fol. 1029] room?

A. Yes.

Q. And what floor was it on?

A. I don't remember.

Q. You don't remember? Did you walk up or ride up in the elevator?

A. Walked.

Q. You walked up and he took you folks up to the room and let you in, is that right?

A. Yes.

Q. And when next did you leave the room?

A. The next morning.

Q. And the gentleman who was with you didn't leave either that night, did he?

A. No.

Q. And you say that after you reached the room you had considerable conversation, is that right?

A. Yes.

Q. And how long did that keep up?

A. Most of the night.

Q. Most of the night. And did you folks go to sleep, or did you sleep?

A. I don't see where that has any bearing on this case.

Mr. Parsons: I insist upon the question.

The Court: Answer the question.

A. I did.

[fol. 1030] By Mr. Parsons:

Q. And did you and this gentleman have sexual relations?

A. No.

Q. No?

A. No.

Q. Did you—When you slept, did you take off any of your clothing?

A. My dress.

Q. Just your outer dress?

A. Yes.

Q. And did you take your shoes off?

A. Oh, yes.

Q. And your stockings?

A. Yes.

Q. That is all?

A. Yes.

Q. Nothing else?

A. No.

[fol. 1031] Q. Then did the gentleman take off his clothing?

A. I don't remember.

Q. You don't remember whether he did or not?

A. No, I do not.

Q. And did he lie down with you—pardon me, on the same bed?

A. He was sitting talking, the last I remember.

Q. When you last saw this gentleman he was sitting and talking?

A. Yes.

Q. And you don't know whether he retired to the bed, or not, is that right?

A. No, I don't think it is quite necessary to answer that.

Q. I am sorry, lady.

The Court: You have to answer the question.

A. I don't know.

By Mr. Parsons:

Q. You don't know?

A. No.

Q. About what time did you folks arise in the morning?

A. We were back to town before 8:00 o'clock.

Q. Before 8:00?

A. Yes, sir.

Q. And where were you left, do you know?

A. At Pico and Hoover.

Q. Pico and Hoover?

A. Yes, sir.

[fol. 1032] Q. You were at that time living someplace in the neighborhood of 9th and Alvarado, were you not; near Lake?

A. No, I was living on Coronado.

Q. You were living on Coronado?

A. Yes, sir.

Q. Did you live on Coronado later?

A. Yes, some months later, in September or October.

Q. In September or October you did move over toward 9th and Coronado, is that correct?

A. Yes, sir.

Q. And do you know of any person who saw you and a gentleman whom you say is Mr. James, on that evening that you went to Hermosa Beach?

A. No.

Q. You can't name a single human being, except the hotel clerk, who saw you, can you?

A. No.

Q. Now, you know Mrs. Joe Marsh, who lives on Gramercy near 9th, don't you?

A. Yes, sir.

Q. And your mother's name was Lily Barrett, was it not?

A. Yes.

Q. And you used to live in Wenatchee, Washington, did you not?

A. Yes.

Q. And you also had some experiences in Salem, Oregon, [fol. 1033] did you not?

A. No, I did not.

Q. Have you ever been in Salem, Oregon?

A. I lived there, yes.

Q. Are you acquainted with a dentist there?

A. Yes.

Mr. Williams: Just a minute. That is objected to as not proper cross examination.

The Court: Objection sustained.

Mr. Parsons: You have been in the barber shop of Mr. James, have you not?

A. I dropped in, yes.

Q. You dropped in. And when was that that you dropped in?

A. I don't remember.

Mr. Parsons: Miss Lois Wright, would you stand up, please?

(Lois Wright stands.)

Mr. Parsons: Will you, Miss Witness, take a look at this young lady, please? Thank you, Miss Wright. Did you ever see that young lady in the shop?

A. Not to my recollection.

Q. And how long were you in the shop?

A. Probably a minute or two.

Q. And while you were there you asked for and received some money from Mr. James, did you not?

A. No.

[fol. 1034] Q. Now, when you visited the shop, was that before or after the death of Mrs. James?

A. Several month- after.

Q. Several months after?

A. Yes.

Q. Now, isn't it a fact that after this occurrence that you related, where you said that you met Mr. James at the Italian Village, that you dropped in at the barber shop and asked Mr. James for \$10.00, stating that you had spent some money for taxi fare, and thought that he should take care of your expenses?

A. I never.

Q. And what was the object of your visit at the barber shop?

A. Well, he had called me some time before.

Q. He had called you?

A. Yes, sir.

Q. Do you remember when that was?

A. It was at a time when my mother was dying, and I did ask him for money to see her.

Q. Now, your mother was very ill, wasn't she?

A. Yes.

Q. In fact, dying?

A. Yes.

Q. And you went down to see Mr. James, and you told him your predicament, did you not?

[fol. 1035] A. No, I talked to him on the 'phone.

Q. And you told him that you were really up against it for money?

A. To see my mother, yes.

Q. And that you needed it very badly; didn't you tell him that?

A. Yes.

Q. And you tried to——

A. I said inasmuch as he had asked me to commit perjury, and I had given him the impression I would, and he said he would pay me whether I testified or not, that I thought he owed me the money.

Mr. Parsons: May I have that read, please?

The Court: Please read it.

(Question and answer read by the reporter.)

By Mr. Parsons:

Q. Now, did he give you any money?

A. Not then, no.

Q. Now, he did give you \$60.00 the morning after the night that you folks sat up down there at Hermosa Beach?

A. Yes.

Q. And you wrote Mr. James a letter or two, did you not?

A. I wrote him one, yes.

Q. And you asked him in that letter for some money, did you not?

A. Yes.

Q. How?

[fol. 1036] A. Yes.

Q. And what did you say?

Mr. Williams: Just a minute. That is objected to.

The Court: Sustained. It is not the best evidence.

By Mr. Parsons:

Q. Now, you did tell Mr. James, did you not, that unless he gave you some money that you would go to the newspapers and attempt to sell your story, didn't you?

A. I don't recall.

Q. Didn't you, in substance, say that to Mr. James?

A. I don't recall.

Q. Would you now tell this Court and this jury that you didn't say that to Mr. James?

Mr. Barnes: That is objected to on the ground there is no foundation laid for it, the witness having answered that she didn't recall.

The Court: Objection sustained.

By Mr. Parsons:

A. And would you say that the only time you discussed money with Mr. James was on the morning after you had been to Hermosa Beach, when he paid you the \$60.00, and upon the occasion at the barber shop? Is that right?

A. He came up just before the insurance trial and offered me \$100.00 to testify on that.

Q. When was that?

A. That was in November, I believe.

Q. In November?

A. Yes, sir.

[fol. 1037] Q. And you were still seeing him then?

A. No.

Q. And when was the last time that you called at the Barber shop?

A. I don't recall.

Q. You don't recall?

A. No.

Q. Now, to go back to that experience out at the James home, when you were out at the James home, and this lady came in, had you taken off any of your attire?

A. I was completely dressed.

Q. You were completely dressed?

A. Yes, sir.

Q. Now, at the time these occurrences which you have related here, you were not living with your husband, were you?

A. We were separated.

Q. You were separated?

A. Yes, sir.

Q. And he was not paying you any support money, was he?

Mr. Williams: That is objected to as not proper cross examination.

Mr. Parsons: It goes to the financial matters.

The Court: Objection sustained.

By Mr. Parsons:

Q. You were short of money, were you not?

Mr. Williams: The same objection.

[fol. 1038] The Court: You may answer.

A. No, I was not.

By Mr. Parsons:

Q. What income did you have?

Mr. Williams: Objected to as not proper cross examination.

The Court: Overruled.

A. I think some antiques which I disposed of.

By Mr. Parsons:

Q. Some antiques that you disposed of?

A. Yes, sir, and a girl friend was living with me, and paying some expenses.

Q. And who was she?

A. Vera Russell.

Q. Vera Russell?

A. Yes, sir.

Q. And Mrs. Barrow worked in a beauty shop?

A. Probably she does.

Q. And probably she does some of that work?

A. She probably does.

Q. Have you ever visited her there?

A. No, sir.

Q. Did you ever communicate with her there?

A. By 'phone.

Q. Do you know the telephone number?

A. Well, I have it written down someplace.

Q. And did you inquire for that number by looking in the directory?

[fol. 1039] A. No.

Q. You cannot give us any idea, of course, where we might find her?

A. No, I really could not.

Q. You could not?

A. No, I really could not.

Mr. Parsons: That is all, Lady.

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CHARLES H. HOPE, recalled as a witness in behalf of the People, having been previously sworn, testified as follows:

Cross-examination (Continued).

By Mr. Clark:

Q. Now, Mr. Hope, I am going to read, with the Court's permission, from your testimony given here before, a few questions and answers, so that you will understand the connection of a few questions which are going to be asked you: "By Mr. Williams:"—

Mr. Barnes: What page is that?

Mr. Clark: Page 165.

Mr. Barnes: And the volume?

[fol. 1040] Mr. Clark: Oh, Volume 3, Line 21.

Mr. Barnes: Thank you.

Mr. Clark (Reading): "Q. By Mr. Williams: And that left you how many boxes in the car? A. One box. Q. Did you do anything with the second box? A. Threw it out along the roadway on Venice Boulevard. Q. Now, did you go back to the James house after that? A. I returned there about 1:30 at night."

Q. That would be about 1:30 in the morning of Monday, August 5th, 1935? Wouldn't it?

A. Yes, sir.

Mr. Barnes: That is objected to as immaterial, and it has been asked and answered.

The Court: It may be preliminary.

Mr. Clark: It is preliminary.

The Court: I will permit the question.

By Mr. Clark:

Q. Now, at that time you stated that Mr. James had been drinking. In that connection I wanted to ask you to what extent he appeared to be intoxicated?

A. The fumes of liquor were quite strong on his breath, and he was very vexed at me.

Q. Was his speech incoherent?

A. What was that?

Q. Was his speech incoherent?

Mr. Barnes: I object to that as being asked before.

The Court: I will permit it to be answered.

[fols. 1041-1042] A. Very much shot, sir.

By Mr. Clark:

Q. He staggered when he walked?

A. I didn't notice him walk at all.

Q. Well, you remained there on that occasion for several hours, did you not?

A. I did, yes, sir.

Q. And you finally left somewhere along about between 7:00 and 8:00 o'clock in the morning as I understand it? Is that correct?

A. Yes, sir.

Q. And do you know whether or not Mr. James was drinking during that period, or not?

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[fol. 1043] Mr. Clark: I will repeat it, in substance. Was he drinking between the hours of 1:00 and 7:00 o'clock that Monday morning?

A. I can state that I didn't see him take a drink from the hour of 2:00 o'clock, the rest of the night, no.

Q. Did you see him take any drinks between 1:00 and 2:00?

A. I don't know; I didn't get there until 1:30.

Q. Did you see him take any drinks between 1:30 and 2:00?

A. I saw him take a couple with me.

Q. What was he drinking?

A. Whiskey.

Q. And when you saw him at 7:00 o'clock, did he appear to be any less intoxicated than when you saw him at 1:30?

Mr. Barnes: Just a moment. The form of that question is objected to upon the ground that it assumes a fact not in evidence.

[fol. 1044] Mr. Clark: What is it?

The Court: Sustained. That he was intoxicated.

Mr. Clark: Well, when you saw him at 1:30, he appeared to be intoxicated to you, didn't he?

A. I stated I didn't know whether he was mad, or intoxicated.

Q. And after he took the drinks with you, between 1:30 and 2:00, he appeared to be intoxicated, and not mad at you, didn't he?

A. Well, I wouldn't state that he was intoxicated, or mad either. He didn't seem to be so mad then.

Q. But he did seem to be more intoxicated, didn't he?

A. Slightly, yes.

Q. Did he appear to have been drinking when you saw him in the morning about 7:00 o'clock?

Mr. Barnes: We renew our objection on the ground that it has been thoroughly covered. I think the answers that have been elicited already from this witness have probably recalled to the Court's mind the questions that were answered before.

The Court: You may answer.

A. Well, I was so scared in the morning I don't know whether he was drunk, or not.

By Mr. Clark:

Q. You didn't see any difference between his appearance at 7:00 o'clock, and his appearance about 2:00 o'clock, did you?

[fol. 1045] Mr. Barnes: Objected to as calling for a conclusion.

The Court: You may answer whether you did, or not.

A. He seemed extremely nervous, yes.

By Mr. Clark:

Q. His speech still seemed incoherent, didn't it?

A. His speech never was incoherent.

Q. His gait seemed unsteady, didn't it?

A. As I said before, I didn't see him walk, only the time I walked from the kitchen to the fish pond.

Q. Didn't you walk with him when the two of you carried the body out to the pond?

A. That is the time I am talking about.

Q. He staggered then, didn't he?

A. No, sir.

Q. You walked back to the house with him, did you not?

A. No, sir.

Q. You left him at the pond?

A. Yes, sir.

Q. Didn't see him any more that day?

[fol. 1046] (The following proceedings were had at the bench, out of the hearing of the jury):

Mr. Clark: Here is the situation, your Honor: We expect to prove by several witnesses who saw Mr. James earlier that morning that he didn't appear to be intoxicated, or drunk, and it seems to us that it is one of the very important matters in the case that the testimony of this witness should be very definitely fixed in regard to it. We have no recollection of his having been interrogated with regard to it at that time.

The Court: We are in this situation, Mr. Clark: My recollection is that that was gone into; the extent of it, I don't know. Mr. Barnes is quite positive that it was gone into to considerable extent, and has a digest which will give the reference, and will settle it. You don't have a reference to that portion of the transcript, so you can't afford us anything that will help us. I am going to defer the examination until I can have the reference.

Mr. Barnes: I can have it in five minutes.

[fol. 1047] Mr. Clark: Now, you were out at Mr. James residence on Sunday, the 7th of July, were you not?

A. Yes, sir, I think that is the date.

Q. You had breakfast there that morning, didn't you?

A. I ate breakfast there one Sunday morning, yes, sir.

Q. Mr. and Mrs. James, and Mrs. Murphy, Mr. James' sister, were all at the breakfast table there, were they not?

A. Yes, sir.

Q. There was some conversation occurred there at that time in regard to Mrs. James being in a delicate condition, wasn't there?

A. I think most of the conversation that morning at the breakfast table was the fact that the man was very severely reprimanding his little niece for being at the beach eating hot dogs, and drinking pop, and was quite ill. I think that most of the entire morning during the breakfast hour was spent in bawling her out about that, and Mrs. James reprimanded him severely for doing so.

Q. By "the niece", you mean Lois Wright?

A. Yes.

Q. She became angry after a while and left the table while the rest of you were seated, didn't she?

A. No, she didn't leave the table. She was serving.

Q. Isn't it true that when she wasn't there there was a conversation in which you took part, and in which Mrs. James being in a delicate condition was mentioned?

[fol. 1048] A. No, sir.

Q. Isn't it true that at that time, and in your presence, Mr. James spoke about having an abortion performed?

Mr. Williams: Just a minute. That is objected to as assuming that the witness testified that that subject of conversation was entered into, by using the words "at that time" in his question.

Mr. Clark: No, I don't think I assumed that. May I have the question read?

(Question read by the reporter.)

A. There was nothing at that time, or at any other time, spoken about that.

Q. Didn't Mr. James, on the date I have mentioned, in the presence of the parties I have mentioned, say that he would not have anything to do with such an operation?

A. I never heard any such conversation like that.

Q. And then didn't Mrs. James say, "Well, if Mr. James wouldn't", you would help her out?

A. I have never heard any conversation of that kind at any time.

Q. And didn't you say, "You bet I will"?

A. I did not.

Q. When you left Mr. James' residence that morning you drove down to Virgil and Burns, did you see at that place any person whom you knew?

A. I did.

[fol. 1049] Q. Whom did you see at that place?

A. I saw the manager at the courts.

Q. What is his name?

A. I don't know.

Q. Was Mr. James with you when you saw the manager of the court?

A. He was not. However, the grocery man across the street saw me get out of the car with Mr. James, and also saw those bundles in my arm, whether he recalls it now or not.

Q. Do you recall his name?

A. No, a Japanese man.

Q. Now, altogether you were up there at Mr. James' place how long?

A. On what occasion, please?

Q. Altogether?

A. About four or five days.

Q. That was all in the summer time, was it not?

A. Yes, sir, in the month of July.

Q. You were cleaning up some around there, as I understand?

A. Some.

Q. Did you see any black widow spiders at that time?

A. I did.

Q. Many of them?

A. Quite a few of them, yes. I don't know whether they [fol. 1050] were all black widow spiders, or not. I saw considerable spiders at that time. At that time I didn't know what a black widow spider looked like.

Q. You say you didn't know what a black widow looked like?

A. At that time.

Q. Well, you learned what a black widow spider looked like while you were there, didn't you?

A. I did.

Q. And after you learned you saw many of them there, didn't you?

A. I wouldn't say many; I saw several, yes. They were in the garage, in the hen house and in the wash house.

Q. Now, during all of the time that you were having conversations with Mr. James, never any word was said between you about killing his wife by any other means than by a rattlesnake bite, was there?

A. There was never any conversation between Mr. James and myself about killing his wife any way.

Q. You never entered into any arrangement looking forward to bringing about her death by any other means than a rattlesnake bite?

A. No, I never entered into any arrangement for the accomplishment of her death in any manner.

Q. You never, until that Monday morning, heard Mr. James say anything—I withdraw that. You were not present [fol. 1051] at the time that Mrs. James met her death, were you?

A. No, sir.

Q. And you have no certain means of knowledge as to how she met her death, other than what Mr. James told you, have you?

A. No, sir.

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[fol. 1052] Mr. Clark: When you saw the defendant about the time that your Honor has mentioned the only difference you observed between his appearance then and his appearance and manner when you arrived at 8:30 was that at the later hour he seemed more nervous? That is true?

A. Yes, sir.

[fol. 1053] Q. And that is true of his appearance and manner at the time that you left him at Virgil and Burns?

A. No, he quieted down by that time.

Q. Otherwise, his appearance was the same?

A. I didn't smell any liquor.

Q. Well, his appearance and manner was the same?

A. Yes, sir, his appearance and manner were the same.

Mr. Clark: That is all.

Mr. Williams: Did he drive his car down to where he left you off?

A. He did.

Mr. Williams: That is all.

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WILLARD L. KILLION, recalled as a witness in behalf of the People, having been heretofore duly sworn, testified as follows:

Direct examination.

By Mr. Williams:

Q. Mr. Killion, what is your occupation?

A. Deputy Sheriff of Los Angeles County.

Q. Attached to what part of the Sheriff's office?

A. The Bureau of Investigation.

[fol. 1054] Q. And you know the defendant, Robert S. James, do you?

A. Yes, sir.

Q. Did you see the defendant, Robert S. James, on the 3rd of May, 1936?

A. I did.

Q. And in what part of the jail did you see him?

A. On the front floor, that is a room adjoining the attorney room.

Q. And who were present at that time?

A. Charles Griffen and Jack Southard of the District Attorney's office, and yourself and Deputy Sheriff Virgil Gray and I were there. As I remember those were the persons present.

Q. Do you remember this Lynch, the reporter?

A. Yes, Mr. Edward F. Lynch, a man from the Sheriff's office.

Q. You know Charles Hope, do you?

A. Yes, sir.

Q. At that time was he brought into the room?

A. Yes, sir.

Q. And at that time was a statement made in your presence of Mr. James and answers made by him?

A. Yes, sir.

Q. Now, was that taken by the shorthand reporter at that time?

A. Yes, it was taken by Edward Lynch.

[fol. 1055] Q. And did you within a day or so thereafter, in your memory, see a transcript of his notes, of the matters that he took for you?

A. Yes, sir.

Q. I show you a transcript and ask you if that is a copy of the transcript that you saw?

A. Yes.

Q. Now, by refreshing your recollection, will you state exactly what was said and by whom, at that time? You can answer that "yes" or "no".

A. Yes.

Q. I will ask you to use the record and see if that will refresh your memory as to detail.

A. Yes, sir.

Q. Now, using the transcript to refresh your recollection, state what was—state who was there and what was said there by the persons there present.

Mr. Clark: I don't want to object at this time, but I direct the attention of the Court to the fact that the witness is using memoranda for the purpose of refreshing his recollection, using a memoranda which we haven't had an opportunity to examine.

The Court: Well, I don't know as there is anything that entitles you to see the memorandum, except for the purpose of cross examination.

Mr. Clark: My understanding, your Honor—

[fols. 1056-1060] The Court: That might refresh your memory.

Mr. Clark: My humble understanding is that the instrument should be shown to counsel before the witness is shown the document, and I thought we had a right to see it before the witness was asked the question. There has been nothing more common in my practice, and counsel have been permitted to cross examine on voir dire concerning documents which they intended to use to refresh the recollection.

The Court: I haven't any feeling as to the voir dire examination.

Mr. Clark: That is why I desire to ask whether a voir dire examination is necessary.

The Court: I think under the circumstances it will do no harm.

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[fol. 1061] GRACE YARNELL, recalled as a witness in behalf of the People, having been heretofore duly sworn, testified as follows:

Direct examination.

By Mr. Barnes:

Q. Miss Yarnell, in the year 1932, in the months of September and October, was there a bus line operating and running between Colorado Springs and Manitou?

Mr. Clark: That is objected to upon the ground that it — incompetent and irrelevant.

The Court: Objection overruled. You may answer.

A. Yes, there was.

By Mr. Barnes:

Q. Were there taxicabs in operation from Manitou to Colorado Springs at that time?

Mr. Clark: Just one moment, the same objection.

The Court: The same ruling, you may answer.

A. Yes, there was.

Mr. Barnes: That is all.

Cross examination.

By Mr. Clark:

Q. But you have no knowledge as to what hours the bus [fol. 1062] line operated during the month of October, 1932?

A. They always ran every 10 minutes.

Q. A bus line from Colorado Springs to Manitou, and the bus ran every 10 minutes?

A. Yes, sir.

Q. And you don't know whether Mr. James used any bus line on any particular day or not?

Mr. Barnes: That is objected to unless the witness saw him.

The Court: Objection sustained. I will change that ruling. You may answer. Have you any knowledge as to whether Mr. James did use the bus on that day or not?

Mr. Barnes: I think, if the Court please, it should be personal knowledge and not hearsay.

Mr. Clark: Well, let me reframe the question.

The Court: All right.

By Mr. Clark:

Q. You don't know of your own knowledge, whether Mr. James did or did not use any bus line going from Colorado Springs to Manitou on the day that Mrs. James met her death, do you?

A. I didn't see him.

Q. You say that taxicabs operated between the two places. By that you mean, I suppose, that a person could hire a taxicab for the purpose of making the trip?

A. Yes.

Q. You didn't mean that taxicabs do make regular trips the same as buses do, did you?

[fol. 1063] A. No.

Mr. Clark: That is all.

Mr. Barnes: That is all, Miss Yarnell.

Mr. Williams: Call Mr. Lynch.

Mr. Clark: I forgot in reference to Mr. Killion there will probably be some matters on voir dire cross examination that we will want to use Mr. Killion on.

The Court: Oh, yes.

EDWARD F. LYNCH, called as a witness in behalf of the People, being first duly sworn, testified as follows:

The Clerk: State your name, please.

The Witness: Edward F. Lynch.

Direct examination.

By Mr. Williams:

Q. What is your occupation, Mr. Lynch?

A. Statement reporter, in the Sheriff's Department, Los Angeles County.

Q. Did you occupy that position on May 2nd, 1936?

A. Yes, sir.

Q. On that date, about 11:45 A. M. in the county jail of Los Angeles County were you present when questions were asked and a statement to the defendant Robert S. James, and his reply thereto?

A. Yes, sir.

[fol. 1064] Q. Did you at that time, take any shorthand notes?

A. I did.

Q. Did you at that time, take shorthand notes of everything that was said in your presence?

A. I did.

Q. Have you those notes with you?

A. Yes, sir.

Q. Did you in addition to making those notes and immediately thereafter transcribe into longhand by typewriter everything which you had taken in your notes?

A. Yes, sir.

Q. Were the notes and the transcription made a true and correct report of what was said in your presence on that day?

A. Yes, sir.

Q. As a matter of convenience will it be better for you to use the transcript rather than the notes?

A. No.

Q. It doesn't make any difference?

A. No, sir.

Q. Turning to your notes and using them for the purpose of refreshing your recollection, will you state at this time who were present and what was said on that occasion?

Mr. Clark: Just one moment. That is objected to upon the ground that it is incompetent and no foundation has been laid for the introduction of such testimony in that apparently it is an attempt to get an accusatory statement, [fol. 1065] accusing Mr. James of the crime for which he

is now on trial, together with his conduct thereto, for the jury, amounting to an implied confession, without any showing that such implied confession is free and voluntary, and without the showing that Mr. James was so situated at the time the proposed testimony relates, and that the circumstances were such that he was free to speak, or not, as he desired.

[fol. 1066] The Court: The objection will be sustained until further objection is made.

By Mr. Williams:

Q. Prior to, and at the time of the taking of the statement, were you in the room, Mr. Lynch, with Mr. James?

A. Mr. James was in the room when I arrived.

Q. Yes. And at the same time that you arrived did other persons arrive?

A. Yes, sir.

Q. Who arrived with you?

A. I believe it was Deputy Sheriffs Gray and Killion.

Q. And when you went into the room, who were in the room?

A. You were in the room, Mr. Southard, Mr. Griffen, and there were some newspaper men and photographers there.

Q. Now, was there any force or violence used upon the defendant at that time?

A. No, sir.

Q. Were there any threats made to him?

A. No, sir.

Q. Or any offer, or any promise or hope extended for immunity or reward?

A. No, sir.

Q. Was the statement he made at that time made freely and voluntarily?

Mr. Clark: Just a moment. That is objected to on the ground it calls for a conclusion of the witness.

[fol. 1067] The Court: Overruled.

A. Yes, sir.

By Mr. Williams:

Q. Now, reading from your notes, will you state what was said by each person present?

Mr. Clark: Now, if your Honor please, we repeat our objection stated a moment ago to a similar question, that

it is incompetent, and that no foundation has been laid therefor, and we desire at this time to examine the witness upon voir dire, and in that connection we offer to show to your Honor, by the cross examination of this witness, supplemented, perhaps, by independent testimony, that the circumstances under which the conversation took place was such that Mr. James was not in the position to speak, or—that he was refrained from speaking as he chose, and that his statements there, and his conduct, were not free or voluntary.

The Court: You may examine the witness on voir dire.

Mr. Clark: Will your Honor indulge me if I stand around and have a little better view of the witness' face?

The Court: You may do so.

By Mr. Clark:

Q. What was the name, sir?

A. Lynch.

Q. Mr. Lynch, the place where this conversation occurred was in the County jail, was it?

A. Yes, sir.

Q. It was your understanding that the defendant was then a prisoner in the jail?

[fol. 1068] A. Yes, sir.

Q. You didn't accompany him from his tank in the jail to the place where the conversation took place, did you?

A. No, sir.

Q. You have no knowledge of what, if anything, was said to him between the two places, have you?

A. No, sir.

Q. When you reached the room to which you have referred, Mr. James, as I understand, was already there?

A. Yes, sir.

Q. You don't know, of course, what conversation had taken place before you came in?

A. No, sir.

Q. You do know that Mr. Southard was one of the people who were present when you entered the room?

A. Yes, sir.

Q. And you know Mr. Southard as being an investigator of the District Attorney's office?

A. Yes, sir.

Q. And you know Mr. Griffen was in the room?

A. Yes, sir.

Q. And you knew Mr. Griffen at that time as an investigator of the District Attorney's office?

A. Yes, sir.

Q. All of these people were seated there in the room when you arrived, were they not?

[fol. 1069] A. I don't know whether they were seated, or not. Some of them were.

Q. Well, out of all that I have mentioned, Mr. Southard and Mr. Griffen, were they standing up, or sitting?

A. I couldn't tell.

Q. You know Mr. S. J. Silverman in this case?

A. Only by sight.

Q. He is out of the courtroom temporarily. Mr. Williams, I believe, the Deputy District Attorney, was there?

A. Yes, sir.

Q. Have you seen any other person there who was known to you to be an attorney besides Mr. Williams?

A. No, sir.

Q. And was the defendant sitting down, or standing up, when you first saw him?

A. Sitting down.

Q. About what time of the day was this?

A. 11:45 A. M.

Q. Do you know the defendant was brought into that room handcuffed, or not?

A. No, sir.

Q. He was not handcuffed when you saw him?

A. No, sir.

Q. He was not handcuffed when you saw him?

A. No, sir.

Q. When he was sitting down, was that near some little [fol. 1970] table or desk?

A. It was near a table.

Q. And were others sitting around that table, also?

A. Yes, sir.

Q. With relation to the place, then, where Mr. James was seated, where was Mr. Southard seated?

A. I believe that Mr. Southard was seated across from Mr. James on my left.

Q. That would be facing Mr. James?

A. I believe so.

Q. With the table between the two, as I understand?

A. Yes, sir.

Q. Now, about how wide was that table?

A. About three and a half feet.

Q. And where was Mr. Griffen, according to your recollection?

A. I believe he was seated across from Mr. James, also, and on my left.

Q. All right. I wonder if Mr. Griffen is in the courtroom?

Mr. Williams: He is not.

Mr. Clark: May I hear that last answer, Mr. Person?

(Record read by the reporter.)

Q. He was about the same distance from Mr. James as Mr. Southard was?

A. As I recall.

[fol. 1071] Q. Both of them were facing Mr. James?

A. Yes, sir.

Q. So that when they looked, they could look right directly at Mr. James' face?

A. I believe so.

Q. Was your attention particularly directed to Mr. James' ears at that time?

A. His ears?

Q. Yes.

A. No, sir.

Q. You didn't notice whether they were or were not then swollen?

A. No, sir.

Q. At the time you entered the room, was any conversation going on?

A. Not that I recall.

Q. Without going into anything that was said—withdraw that. When you went there you carried a stenographer's note book, did you not?

A. Yes, sir.

Q. And pencils?

A. A pen.

Q. A pen?

A. Yes, sir.

Q. That is what you usually use in taking shorthand notes?

[fol. 1072] A. Yes, sir.

Q. You went there for the purpose of taking notes?

A. Yes, sir.

Q. It had been communicated to you by some one that shorthand notes were to be taken?

A. Yes, sir.

Q. About how long before you got to the room did you receive that information?

A. About an hour.

Q. You know Mr. Charles Hope, do you?

A. Yes, sir.

Q. Was he present there on the occasion of which you speak?

A. I don't know whether he was there when we went in, or whether he was brought in afterwards, but he was there at the time of the statement.

Q. At any rate, you remember that he was there at the time that your writing was done?

A. Yes, sir.

Q. I am safe in infer-ing, then, am I not, that after you entered the room some little delay occurred before you did any writing, then?

A. No, sir, not over a few minutes.

Q. Well, there were some few minutes after you got there that you did no writing?

A. Yes, sir, I was getting a chair, and fixing the chair [fol. 1073] and the table there.

Q. There was some talking being done during that time, wasn't there?

A. Well, I couldn't say as to that; I don't know.

Q. Well, do you remember, before you commenced writing do you remember hearing Mr. Silverman's name mentioned by any one?

A. No, sir.

Q. The room that you were in when you did the writing is a room adjacent to the attorney's room in the jail, is it? And is it on the south side of the attorney's room?

A. On the south side of the attorney's room, about 75 feet, I imagine.

Q. There are quite a number of other rooms intervening, are there not?

A. No, there is a long corridor from the attorney's room to this room.

Q. And the room in which the conversation took place is isolated, is it not, off by itself?

A. Yes, sir.

Q. Now, how long would you estimate you were in there before you began taking notes?

A. Not over two or three minutes, if that long.

Q. During that two or three minutes the defendant remained seated?

A. Yes, sir.

[fol. 1074] Q. Did you notice the expression on his face while he was seated there?

A. I looked at him. I didn't particularly notice any expression on his face.

Q. Did he look to you then as he does now, as you see him sitting there?

A. Yes, sir.

Q. And again without going into anything that was said to him, who, if you know, was the first person that spoke to him there?

A. Mr. Williams.

Q. At the time that Mr. Williams began speaking you began writing, I suppose?

A. Yes, sir.

Q. Do you think you could tell everything that Mr. Williams said?

A. Do I think I could tell it?

Q. Do you think you did take down everything that Mr. Williams spoke?

A. Yes, sir.

Q. Was Mr. Williams seated across the table from the defendant as Mr. Southard and Mr. Griffen were?

A. Yes, sir.

Q. Where was Mr. Killion?

A. I believe he was to my left, too, across the table from Mr. James. I believe all the men were on my left, and across the table from Mr. James.

[fol. 1075] Q. Mr. James was on one side of the table entirely by himself, is that right?

A. I believe so, yes sir.

Q. About how long did Mr. James remain in the room after you reached it?

A. I don't know. I left. He was still there when I left.

Q. Do you know how long before that Mr. James had been an inmate of the county jail?

A. No, sir.

Q. Or who the arresting officers were?

A. No, sir.

Q. Was Mr. James left alone in that room with anyone while you were there?

A. No, sir.

Mr. Clark: Will your Honor indulge me a moment?

The Court: Yes.

Mr. Clark: If your Honor please, I have no further voir dire examination, no further questions I want to ask this witness; but I do desire at this time to introduce other evidence of other witnesses relating to occurrences prior to the time that this witness came into the room, and things of which this witness has no knowledge.

The Court: You may do so.

Mr. Clark: Will Mr. Southard take the stand for a few questions?

[fol. 1076] J. C. SOUTHARD, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

The Clerk: State your name, please.

The Witness: J. C. Southard.

Direct examination.

By Mr. Clark:

Q. You are an investigator of the District Attorney's office, are you not?

A. I am.

Q. And you have been such investigator, I take it, at least at all times during the present year?

A. For eight years.

Q. Are you one of the officers who arrested this defendant along this spring?

A. The 19th day of April.

Q. You say you arrested him on the 19th of April?

A. That is right.

Q. Where did you make the arrest, may I inquire?

A. 38—

Mr. Williams: Just a moment, we object to anything that happened on the 19th or prior to the time of taking the statement, on the ground it is too remote, incompetent, irrelevant and immaterial.

The Court: That objection is overruled.

A. 3886 South La Salle.

[fol. 1077] By Mr. Clark:

Q. That is in the City of Los Angeles?

A. That is.

Q. About what time of day was the arrest made?

A. 9:12 A. M.

Q. Did you, on the day of the arrest, take the defendant before any magistrate?

A. I did not.

Q. Did you take him to the city jail?

A. I did. I brought him to the District Attorney's office.

Q. Did you take him to the county jail?

A. Not at that time.

Q. You kept him in custody, that is, your personal custody how long?

A. He was not in my personal custody. Different members of the squad took care of Mr. James.

Q. By your personal custody, I was using you plurally to mean you and your associate investigators.

A. That is right.

Q. You kept him in the custody of yourself and other investigators how long?

A. I believe it was two days; I am not sure.

Q. It is a fact, isn't it, that you took him to the county jail on the 21st of April, a few minutes before 10 o'clock.

A. If the record so states, yes.

[fol. 1078] Q. That is your best recollection now, isn't it?

A. I thought I booked him on the morning of the 22nd; I am not sure.

Q. Where did you keep him on the night following his arrest?

A. I brought him back to the District Attorney's office and then returned to the house that we had next door to 3886 La Salle, the address of which is 3882.

Q. Now, let me see if I have got the sequence of events straight in my mind. When you arrested him the first thing you did was to take him to the District Attorney's office?

A. No, the first thing we did was to take him over and show him the dictaphone we had set up in the house next door, that is our receiving set.

Q. Well, after that, the first place you took him was to the District Attorney's office, is that right?

A. After leaving the La Salle street address, yes.

Q. And he remained——

The Court: May I ask the witness one question? I am not sure that we are not going into the subject matter that is irrelevant here. On what charge was the defendant placed under arrest?

A. Incest.

Mr. Clark: Just one moment, I object to that, your Honor, on the ground that it is incompetent, irrelevant and immaterial.

[fol. 1079] The Court: I think it is quite material. For example, suppose we were trying a case of robbery and a man has been arrested on a robbery charge we will say on the 1st of May, 1936, and then on the 1st of March, 1936 he had been arrested on an entirely different charge. I can see no relevancy between his arrest on the 1st of March and his arrest on the charge now pending.

Mr. Clark: Your Honor, I hope I do not receive your Honor's displeasure, but whenever the law arrests a man and holds him at night in this city where there are night Courts, sitting 24 hours a day, seven days a week, I think that is a circumstance to be considered with reference to the freedom of the actions of a defendant at all times thereafter. I made certain suggestions to your Honor in chambers this morning. Apparently a misunderstanding between the Court and myself exists, but I think that I ought to make, your Honor, an offer of proof which should not be made in the presence of the jury.

The Court: Well, I am satisfied that although night courts and other courts are supposed to be in session certain hours and night courts presumably 24 hours a day, I know, as a matter of fact, that that is not true and that after certain hours at night that no court is in session.

[fol. 1080] Mr. Clark: I think, your Honor, in making—I think that your Honor is making a mistake. I know in a case which I have tried heretofore that the statement made was erroneous, and your Honor will realize that I had ample grounds for making the statement that I did.

The Court: I am satisfied.

Mr. Clark: Technically, under the law, I think the courts are in session all the year. The Court is really in session during the entire year.

The Court: Well, any court is supposed to be in session a certain length of time, but generally it ceases to hold any session about 1:00 o'clock.

Mr. Clark: There are a few matters that have occurred to me, and I suggest your Honor take the morning recess, and then when the Court resumes the session, that we have the session outside of the presence of the jury.

The Court: Suppose we take our recess of the jury at this time, take a short recess.

(Jury retires.)

Mr. Silverman: Your Honor, may we have Mr. James taken to the hospital?

The Court: No, the Court is still in session.

Mr. Clark: May I proceed?

The Court: No, I think I have your basic idea. In other words, it might be possible from prior experience that upon an individual being arrested for an offense by the same [fol. 1081] person, there might be matters which would be most material to the admissibility of the confession as to the latter offense, but I thought before we went into the matter there should be some indication on the relationship between the arrest on the incest charge and the murder charge, to show that the statement made on the murder charge might have been influenced by the transaction at the time of the arrest on the incest charge. Were you through?

Mr. Clark: Yes, your Honor.

The Court: I would like to add to what I said in regard to the so-called night court. Instances when Courts have been actually in session 24 hours is something I have never heard of. The Judge on duty during the night session, when an investigation was made, the investigation during the 22nd of June, found that those Judges were not available at that time, after 1:00 o'clock in the morning, and that on certain hours of Sunday that they were not available.

Mr. Clark: If your Honor please, before the case is closed, the statement that I made before—

The Court: I am satisfied in the judgment, and the statement was made in good faith, but you don't know.

Mr. Clark: I am positive of the testimony to that effect. In reference to what your Honor has suggested, I think I might say that we do expect to show in several ways the matters to which your Honor speaks. We expect to show, amongst other things, that the defendant was in the cus-[fol. 1082] tody of these officers, and that he was being investigated not only of murder, but incest, and that the investigation of the incest charge arose out of the investiga-

tion of murder, and according to my understanding, and I have had experience, the difference between the two investigations is not sharply drawn by the investigation at all. [fol. 1083] However that may be, we expect to show that physical violence was used upon this defendant by the investigators while he was in their custody, and that the violence used was so severe as to cause a very high degree of physical suffering, and that when he was brought into the presence of those officers upon that occasion, he feared the repetition of the use of that force and felt forced by reason of that fear to do, as he understood, was expected of him.

I am making this statement, although it probably is not necessary, because I only intended to make a statement to one point, and I may say to your Honor that we expect further to show that shortly before this conversation took place, that Mr. Silverman, who was then representing the defendant and was his attorney, told the defendant that he was going to be indicted for this murder and told the defendant not to make any statement to the District Attorney's office. That is part of the general showing that we expect to make for the purpose of showing that he was not prepared to make any statement in regard to that.

I hope that the proof that I have will go beyond the statement I have made but for a number of reasons I do not want to disclose all we expect to show.

The Court: Well, we will take a few minutes recess.

(Recess.)

The Court: Was that statement marked as an exhibit?

Mr. Clark: I think not.

[fol. 1084] Mr. Williams: No, it was not marked. Does your Honor want to look at it?

The Court: I would like to look at it.

(After Recess.)

The Court: I think we completed our matters outside of the presence of the jury.

(Jury returns into the courtroom.)

The Court: You may proceed.

Mr. Clark: If your Honor please, I have a medical man here, in the nature of whose testimony would probably not be admissible on the foundation that I will undertake to

lay, therefor, but I will attempt to withdraw Mr. Southard and put the doctor on now if I may.

The Court: I understand that there is no objection to that?

Mr. Williams: No objection, only that if the foundation is not laid——

The Court: The jury will understand that this testimony is taken out of order and whether it remains in the record depends on what may appear later in the testimony. However, we will put the doctor on now.

Mr. Clark: Dr. James DeWitt George.

[fol. 1085] DR. JAMES DE WITT GEORGE, called as a witness in behalf of the Defendant, being first duly sworn, testified as follows:

The Clerk: State your name, please.

The Witness: James DeWitt George.

Direct examination.

By Mr. Clark:

Q. Doctor, I understand that you are a physician and surgeon regularly licensed to practice medicine under the laws of the State of California now engaged in the practice of your profession in the City of Los Angeles, is that correct?

A. Yes.

The Court: Just keep your voice up, Doctor.

A. Yes.

By Mr. Clark:

Q. And about how long have you been engaged in such practice?

A. Seven years.

Q. And is that a general practice or do you specialize?

A. Specialize.

Q. What is your specialty?

A. Obstetrics and gynecology.

Q. Now, I will ask you if you knew the defendant, Robert S. James?

A. Yes.

Q. Did you, at my request, make an examination of his [fol. 1086] person during this morning?

A. Yes.

Q. Will you tell us what that examination disclosed?

A. Mr. James has a right inguinal hernia.

Q. Will you just explain what an inguinal hernia is so that the jury will understand?

A. A hernia is a rupture, a breaking of the abdominal wall permitting the contents to protrude.

Q. Have you ever had occasion to make any abdominal examination of Mr. James before this?

A. Sometime in November he came in my office requesting a physical examination.

Q. Was he stripped then?

A. Partially, just to the waist.

Q. Up from the waist?

A. Yes.

Q. That is exposed the entire abdomen?

A. Yes.

Q. Did you see any hernia then?

A. I remember of no hernia at that time.

Q. Did he complain of any?

A. There was no complaint of hernia, no.

Mr. Clark: Cross examine.

[fol. 1087] Cross-examination.

By Mr. Williams:

Q. Did you make an examination at that time to determine whether he had a hernia?

A. Yes, I originally examined the rings, and while I didn't examine as carefully as I examined at the present time I found no evidence of hernia.

[fol. 1088] Q. Now, with reference to this hernia that you discovered today, can you state how long that hernia has been in existence?

A. I have no idea, no. There is no way of telling.

Mr. Williams: That is all.

Mr. Clark: That is all. I understand that we will want the Doctor for about an equal time hereafter, but we will arrange that over the telephone with the Doctor, and try

to inconvenience him as little as we may. I will proceed with Mr. Southard.

J. C. Southard, resumes stand.

Direct examination (Continued):

By Mr. Clark:

Q. Mr. Southard, when did you begin investigating the death of Mrs. James?

A. March 22nd, I believe.

Q. And you continued your investigation of her death down to the time this trial commenced, did you not?

A. I did.

Q. At the time that Mr. James was taken into custody by you and your associates, you were investigating both this charge and another one, were you not?

A. Well, in one way, and in another way, no. It is rather a hard question to answer, Mr. Clark.

Q. Well, you informed him at the time that he was first [fol. 1089] in the District Attorney's office, didn't you, that you were investigating the death of his wife?

A. Not that I recall, at that time. I arrested him on the other charge first. However, I ran into that charge while I was working on the murder angle.

Mr. Clark: May I have that answer, Mr. Person, please?

(Answer read by the reporter.)

Q. Now, you say you arrested him on the other charge. You didn't mean by that that you had any warrant for his arrest upon any other charge?

Mr. Barnes: That is objected to as immaterial.

The Court: Overruled.

A. No, but it was a felony committed in my presence—

By Mr. Clark:

Q. What you mean was the cause or the occasion of the arrest, is that correct?

A. Correct.

Q. Now, during the time that he was in custody, you continued your investigation of the murder charge, did you?

A. I did.

Q. And during that time, also, you also used some physical force upon him?

A. I did not. That was in the other case.

Q. You say that was in the other case. You mean that some physical force was used upon him while he was in your custody, and you attributed the physical force to the other case, is that right?

[fol. 1090] A. I slapped his face in the other case.

Q. Slapping his face is the only thing you did to him?

A. That is right.

Q. What day did you slap his face?

A. I think it was on a Monday morning, the 20th of April.

Q. That would be the day before he was delivered to the County jail?

A. Yes.

Q. Did you present him in the County jail, when he was taken there?

A. I did.

Q. Did you notice any marks or bruises upon his face or head when he was taken into custody?

A. Not that I recall.

Q. Well, you did notice marks and bruises upon his head when you took him to the County jail, didn't you?

A. No, I don't believe so.

Q. Weren't both of his ears bruised and swollen at that time?

A. They were not.

Q. Neither one of them?

A. That I wouldn't say; one may have been. I wouldn't be positive. I know that both were not.

Q. As a matter of fact, you know that one was, don't you?

A. I do not. I saw that one in court.

[fol. 1091] Q. You saw the bruises here when he was in court?

A. The left ear was a little bit swollen at the top.

Q. And he wasn't in court until how many days after you took him to the County jail?

A. As a matter of fact, it was not at the Court. It was at the Grand Jury, when they indicted him for the other charge.

Q. And that was on the 6th of May, was it not?

A. No, that is when he was indicted for the murder charge, but the other charge was before that, Mr. Clark.

Q. He was before the Grand Jury twice?

A. That was in April, I believe.

Q. Now, on the first occasion that you took him to the District Attorney's office, what part of the office did you take him into?

A. Mr. Fitts' office.

Q. Was Mr. Fitts there?

A. He was.

Q. Who else was there?

A. Deputy District Attorney Eugene Williams, Officer Scott Littleton, and Officer Dean, and his niece, Lois Wright.

Q. That was on the same day that he was arrested, as I understand it?

A. That is right.

Q. About how long did he remain there in Mr. Fitts' room?

[fol. 1092] A. Oh, I would say about approximately an hour.

Q. Didn't you take him to one of the rooms in the investigating bureau before you took him to Mr. Fitts' office, Mr. Southard?

A. I did not. Lieutenant Morgan of the Los Angeles Police Department did.

Q. How long was he there in the investigating bureau before he was taken into Mr. Fitts' office?

A. I couldn't tell you, because I wasn't back there with him. I was in Mr. Fitts' office.

Q. About how long was it after you took him into the suite before you saw him in Mr. Fitts' office?

A. Possibly an hour.

Q. Before you took him to Mr. Fitts' office, did he say anything to you about wanting a lawyer?

A. He did not.

Q. Did you hear him say anything to any one about wanting a lawyer before that?

A. At no time.

Q. You never did hear him say anything about wanting a lawyer?

A. I never did.

Q. Didn't you tell him there in Mr. Fitts' office that you had tried to telephone his lawyer, Mr. Silverman, and were unable to reach him?

A. I did not.

[fol. 1093] Q. Did you ever tell him that, at any time?

A. I did not.

Q. Did any discussion ever take place between you and Mr. James, or in your presence, in which Mr. James' attorney was mentioned?

A. No—the discussion was in my presence. I believe he asked Mr. Fitts to get in touch with Mr. Silverman, and Mr. Fitts offered to get in touch with him, and was unable to locate him, but as far as I personally, I didn't have anything to do with it.

Q. That was upon the first time that he was in the District Attorney's office?

A. That is right.

Q. Did you hear Mr. James frequently after that then express a desire to be represented by counsel when he was in the District Attorney's office?

A. I did not.

Q. Or when he was with investigators?

A. I didn't pay much attention to Mr. James. I was working on the other angle of the case, entirely.

Q. Now, during the hour that Mr. James was in Mr. Fitts' office, did any one ask him if he wanted to have a lawyer present?

A. That I could not state.

Q. Was any stenographer present during that time?

A. I believe there was.

[fol 1094] Q. And the stenographer was taking down what was being said, as nearly as you could tell?

A. As I recall, yes.

Q. Do you know who the stenographer was?

A. We have had so many, Mr. Clark, I wouldn't say whether it was Bob Herron, or Mrs. Dorothy Adams of our office.

Q. When Mr. James was taken into the District Attorney's office, and by that I mean into the suite, was he handcuffed?

A. He was not.

Q. And of course he wasn't handcuffed when he was taken into Mr. Fitts' room?

A. He was not.

Q. During the period which you estimate to be about an hour, while he was in the room, questions were being asked him, were they not?

A. Which room are you referring to now, Mr. Clark?

Q. Mr. Fitts' room.

A. Yes.

Q. I understand that in the other room you weren't present, and wouldn't know?

A. Yes.

Q. And he was being questioned by more than one person, wasn't he?

A. No, I think Mr. Fitts did all the questioning at that time.

[fol. 1095] Q. He was told that Mr. Fitts was the District Attorney wasn't he?

A. He was.

Q. And he was told that he was accused of a felony, wasn't he?

A. He was told that Lois Wright had made a complete confession of the whole thing.

Q. And during the time that he was in there some statements were made to him concerning the death of his wife, were they not?

A. Not at that time, I don't believe, Mr. Clark.

Q. Wasn't he at that time told by Mr. Fitts that you were investigating the death of his wife?

A. I believe not.

Q. Wasn't he told at that time that it was the intention of the District Attorney's office, if he didn't make a complete statement, to charge him with the death of his wife?

A. No, sir, at no time.

Q. When he was there in the District Attorney's office he was told that a statement was wanted from him, wasn't he?

A. Mr. Fitts showed him the statement of Lois Wright, and asked him if he recognized her signature, and as I recall it, he said he did.

Q. That was as soon as he was brought in there, is that correct?

A. Lois Wright was taken in first——

[fol. 1096] Mr. Clark: Pardon me. That is not answering the question. Read the question.

(Question read by the reporter.)

A. No, that is not correct.

Q. Well, something was said to him as soon as he was brought in, wasn't there?

A. Into Mr. Fitts' office, or into the building?

Q. Into Mr. Fitts' office.

A. When he first came to Mr. Fitts' office, that is what I was relating.

Q. We didn't understand each other. The first thing after he came into Mr. Fitts' office, Mr. Fitts told him that Lois Wright had made a statement, and asked him if he recognized her signature, is that right?

A. That is right. Mr. Fitts showed him her statement.

Q. The statement that Mr. Fitts showed him was typed, of course?

A. It was.

Q. And you weren't present when the typing was done?

A. No, sir.

Q. Did Mr. Fitts say to him, in substance, that he had better clear the whole thing up and save a lot of expense?

A. No, sir, not at that time. That was in this case here.

Q. At any rate, he was told up there on the first occasion that a charge of murdering his wife was then under investigation, wasn't he?

A. I believe not.

Mr. Clark: It is a little near the hour of adjournment.

The Court: Well, we have a few minutes yet.

By Mr. Clark:

Q. Now, how long after that was it—by the way, he didn't sign any statement on this first visit to the District Attorney's office, did he?

A. Not to my knowledge.

[fol. 1098] Q. He said something then about not wanting to talk, didn't he?

A. Well, as I recall, he refused to talk to Mr. Fitts.

Q. When you say "He refused to talk", instead of saying he didn't want to talk, he said that he refused to talk, is that it?

A. No, that isn't what he said.

Q. How long was it after this first occasion before he was back in the District Attorney's office?

A. You mean back there for questioning again?

Q. Yes.

A. Let's see; I arrested Charlie Hope on the 1st, and I believe that was on the 2nd of May in the District Attorney's office in the custody of Killion and Gray of the Sheriff's office.

Q. On the 2nd of May?

A. Yes sir, that is right.

Q. On this occasion in Mr. Fitts' room, he told Mr. Fitts that he didn't want to talk almost as soon as he got into the room, didn't he?

A. He told Mr. Fitts to go to hell, if you want to hear the plain words.

Q. He said that right away?

A. After Mr. Fitts asked him a few questions.

Q. You would say after the first half dozen questions?

A. After he was shown this document and Mr. Fitts asked [fol. 1099] him about it.

Q. He hadn't been in the room for five minutes at that time, had he?

A. No, I don't believe he had.

Q. And then he said he didn't want to answer any questions, and for Mr. Fitts to go to hell, and they kept right on questioning him?

A. Yes, sir.

Q. Mr. Williams took part in that questioning as well as Mr. Fitts?

A. I wouldn't be sure about that.

Q. You took some part in it?

A. Not that I recall.

Q. Quite a few questions were asked when he didn't say anything at all?

A. They asked him about his trip from Alabama out here and all about it and he made no answer at all.

Q. And when questions were asked that he didn't answer, why they simply went on asking questions, didn't they?

A. Let me get that question straight.

The Court: You spoke inadvertently, Mr. Clark.

Mr. Clark: What is that?

The Court: You spoke inadvertently.

Mr. Clark: Perhaps. Let me withdraw the question and save time by asking another.

Q. When any question was asked him, that he didn't answer, somebody shot another question at him, didn't they?

[fol. 1100] A. Mr. Fitts continued on asking him questions as I recall.

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[fol. 1101] J. C. SOUTHARD resumed the stand and testified as follows:

Direct examination (continued).

Mr. Mr. Clark: May I proceed now, your Honor?

The Court: Yes, you may proceed.

By Mr. Clark:

Q. Now, Mr. Southard, when you arrested the defendant, why didn't you take him before a magistrate?

Mr. Williams: That is objected to as immaterial, if your Honor please.

The Court: Objection sustained.

By Mr. Clark:

Q. The reason you didn't take him before a magistrate at once was because you wanted to get a confession from him, wasn't it?

Mr. Williams: The same objection.

The Court: Objection sustained.

By Mr. Clark:

Q. As I understand, after this interview in the District Attorney's office, you took Mr. James down to a house adjacent to the one he had been living in, is that right?

A. That is right.

Q. At that time the county jail was located in this same [fol. 1102] building as it is now?

A. Yes, it is in the same building.

Q. You did not at any time that day or the day of this arrest or the next day, take him to the county jail, did you?

A. I couldn't quite catch that question.

(Question read by the reporter.)

A. Not that day or the next. As I recall it was the following morning.

Q. During the time following his arrest and before he was taken to the jail, various investigators from the District Attorney's office talked to him, isn't that true?

A. I believe that is right.

Q. And Mr. Griffen was one of them, wasn't he?

A. Yes, I believe he did talk to him.

Q. Talked to him out there at the house where you were keeping Mr. James?

A. That is right.

Q. Mr. James wasn't left alone a minute during any of that time?

A. I couldn't state. I wasn't with him all of that time.

Q. Didn't you give instructions that he should not be left alone?

A. In what way, left alone, Mr. Clark?

Q. Left without some person being in his immediate presence?

A. I had him under arrest. I had someone with him all [fol. 1103] the time, surely.

Q. And all the time that you were there somebody was talking to him, weren't they?

A. Yes.

Q. He was being asked questions all the time, wasn't he?

A. That is right.

Q. A great many of the questions he didn't answer, did he?

A. Some he would and some he would not.

Q. Sometimes he would just droop his head and sit there in silence, wouldn't he?

A. No, he wouldn't droop his head. He would just sit there and look at you blankly.

Q. And when he sat there and looked at you the questions proceeded all the more vigorously, didn't they?

A. No, just the same line of questions.

Q. Just the same line of questions, but they came a little faster, did they not?

A. No, they did not.

Q. He wasn't taken out for meals during that time, was he?

A. I beg your pardon.

Q. Was he?

A. Yes.

Q. How many times was he taken out to meals?

A. Every time it came meal time.

[fol. 1104] Q. How many meals did he have?

A. He had three meals a day and if he wished at night why, he had something else to eat.

Q. He was pretty well worn out when he got to jail, wasn't he?

A. I couldn't tell you.

Q. He looked like it, didn't he?

A. He looked about the same as he does now, only he hadn't shaved.

Q. And now, after he was put in jail, how long was it until you saw him again?

A. I believe the next time I saw Mr. James was on the morning of the 2nd of May when the statement was taken from him in the Chaplain's room of the county jail.

Q. Where did you first see him then?

A. When Deputy Sheriff Killion brought him into the room.

Q. Were you yourself in the room before Mr. James came in?

A. I don't believe I was.

Q. You met Mr. James on the way in, didn't you?

A. I couldn't say. I had Charles Hope handcuffed and I couldn't say whether I met him on the way or not.

Q. Are you sure no words were passed from you to James while he was being taken in there?

A. Positive.

Q. How long was it after he was in the room, if at all, [fol. 1105] before the stenographer was sent for?

A. I couldn't tell you.

Q. Well, there was some conversation with Mr. James in the room before the stenographer was sent for, wasn't there?

A. There wasn't a word spoken until the stenographer was present and Mr. Hope was in the room.

Q. Was there any conversation that occurred before the stenographer began writing?

A. There was not.

Q. Now, the next few questions, your Honor, that I am now going to ask, would not be voir dire to this particular transaction. I will ask one of them, and if counsel objects, or your Honor thinks it is improper, I will not go any further. Now, after this conversation in the Chaplain's office there, you had some further conversations with Mr. James the same day, didn't you?

A. Not that I recall.

Q. Did you see him in the District Attorney's office that same day?

A. Well, if the defendant should confess, yes. That was at night.

Q. What time did you see him at night?

A. I saw him at—I saw him with Killion in the afternoon at the James home at 1329 La Canada Road.

* * * * *

[fol. 1106] Mr. Clark: Well, at any rate, either on the same day that you saw him in the Chaplain's room, or on the next day, you saw him in the District Attorney's office, is that right?

A. Yes, in the evening, I believe it was.

Q. Did you arrange to have him taken to the District Attorney's office?

A. I did not.

Q. You don't know how he came to be there?

A. I do not.

Q. You say it was in the evening; about what time of the evening did you see him?

[fol. 1107] A. Oh, I would say it was along about possibly 5:00 or 6:00 o'clock.

Q. And in what part of the office did you see him on that occasion?

A. I believe it was in Mr. Stewart's room.

Q. Did you see him any place in the suite, or corridors, before you saw him in Mr. Stewart's room?

A. Not that I recall.

Q. Do you know who took him to Mr. Stewart's room?

A. I don't know for sure, but at the time I saw him he was in the custody of Deputy Sheriffs Killion and Gray.

Q. And was he handcuffed?

A. I wouldn't be positive as to that.

Q. About how long were you in Mr. Stewart's room at that same time he was?

The Court: I don't think the witness said he was in Mr. Stewart's room. He said he saw him in the room.

Mr. Clark: I beg your pardon.

Q. Were you in Mr. Stewart's room with him?

A. With other people, yes.

Q. When you entered Mr. Stewart's room, who else do you remember being there?

A. Mr. Stewart and Mr. Fitts, Deputy District Attorney Eugene Williams, I believe was there, and Deputy Sheriffs Killion and Gray. I believe that is about all at that time.

Q. Mr. Silverman wasn't there?

[fol. 1108] A. He was not.

Q. Nor any lawyer other than the Deputy District Attorneys that you mentioned, and the District Attorney?

A. Not that I recall.

Q. And did you enter the room before Mr. James, or at the same time, or after him?

A. Mr. James was in the room.

Q. He was already in the room when you came in?

A. He was.

Q. All of these other parties were already there, were they?

A. They were.

Q. Now, he was asked quite a few questions there, wasn't he?

A. Yes, he was.

Q. All of you participated in the questioning, did you not?

A. Yes, I believe everybody talked to him.

Q. Altogether questions were asked him for an hour or two, were they not?

A. I beg your pardon?

Q. I say altogether he was questioned there for an hour or two, wasn't he?

A. I couldn't say as to the length of time; it was quite a while.

Q. Did you take him back to the County jail?

[fol. 1109] A. No, sir, I have never handled Mr. James from the time that I booked him.

Q. By the way, do you know Miss Dorothy Adams?

A. Miss Dorothy Adams?

Q. Yes.

A. Yes, very well.

Q. She was in there part of the time, in Mr. Stewart's room, wasn't she?

A. Not that I recall.

Q. Was there a shorthand reporter, or stenographer?

A. I don't believe there was.

Q. Now, Mr. James was told that you had the goods on him and he might as well come through, wasn't he?

A. It could have been possible.

Q. You heard it stated, didn't you, when you were holding Mr. James out at the house that you had to get a confession out of him?

Mr. Barnes: Objected to on the ground it is hearsay.

The Court: Objection sustained.

Mr. Clark: I meant heard it stated in Mr. James' presence.

The Court: I think it is still objectionable on the ground that there is no identification of who made the statement. It might have been the street cleaner, as far as we know.

Mr. Clark: Very well. You heard Mr. Griffen, the investigator for the District Attorney's office, say something to that effect, didn't you?

Mr. Williams: That is objected to, if your Honor please, as hearsay.

The Court: Overruled.

A. At no time, no, sir.

Mr. Clark: That is all I have from Mr. Southard.

Cross-examination.

By Mr. Williams:

Q. Mr. Southard, just state what conversation occurred between you and the defendant immediately prior to the time when you slapped him in the face.

Mr. Clark: That is objected to upon the ground that it is incompetent, and an attempt to do by indirection just what we have objected to being done directly. However, I appreciate what counsel is trying to get at, and if counsel will frame this particular question in a leading form, I will not object to it as being leading, and then we can see whether it is subject to other objection, or not.

The Court: I didn't get the phraseology of part of the question. May I have it again?

(Question read by the reporter.)

[fol. 1111] The Court: Well, that might be admissible, and it might possibly be objectionable as calling for a conversation. However, the incident having been referred to, the significance of the incident depends, of course, upon the

confession and the balance of the transaction would be admissible.

Mr. Clark: As far as that is concerned——

Mr. Williams: That is not the point upon which we are asking a question.

Mr. Clark: I do not contend that, but I do not believe that a prisoner gives an officer the right to strike him.

The Court: Well, Mr. Clark, the transaction may be such, weighing it as to whether the slapping occurred, the slapping is not any evidence of showing the manner and attitude of what he said. And the law shows that you cannot slap a person unless some violent injury is done, but we know that independent of the law, there are things that occur that are the result of a normal reaction of an individual.

Mr. Clark: There is something in connection with that reaction which I would like to say. However, I don't think that I could say it in the presence of the jury.

The Court: Well, I have reference to the fellow who says, "Now, see that smile".

Mr. Clark: May I point out that the duty of the officer is to take the prisoner before the presiding magistrate? This defendant could not make any use of any language if [fol. 1112] the questions are made in that way. If I am going too far on these matters——

The Court: Well, I don't see how the Court could possibly permit you in the conclusion that the incident of slapping were to have any question of admissibility in the court having the balance of the conversation. Part of the transaction may mean something.

Mr. Clark: I call your Honor's attention to the fact that although the rule is to contrary in this state, that in the majority of the jurisdictions, the law is that when a defendant is in the custody of the officers, that that is inadmissible by reason of that one fact. While that isn't the law here, sometimes in California there is a clear recognition and in some cases it is a strong circumstance tending to show lack of volition.

The Court: We are a little way apart on that. The Court's ruling, that the transaction as to the slapping is to remain a part of the same record——

Mr. Clark: I don't think it is, though.

The Court: Only Mr. Williams' direct question might be objectionable,——

Mr. Clark: I think your Honor is right. Having your Honor's reasoning in mind, that the question should be put in a leading form, I think that the objection would be doubtful if absolutely put.

The Court: I think you had better reframe the question, [fol. 1113] Mr. Williams.

By Mr. Williams:

Q. I will ask you what happened immediately prior to slapping the defendant?

A. I had a conversation with Mr. James.

Q. What was the conversation?

Mr. Clark: The same objection.

The Court: Overruled.

A. I told Mr. James, "It is a dirty shame, such a beautiful little girl and so well brought up and so well thought of by everyone, had to die in a fish pond, be drowned and then put there."

And then James said, "Aw, leave me alone and quit questioning me about her. She wasn't so much before I married her; she was only a little whore when I married her." and I lost my temper and slapped him.

[fol. 1114] Mr. Clark; Just a moment, if your Honor please; I move that that answer be stricken out. I want to get—I beg your pardon.

The Court: I don't hear you.

Mr. Clark: I was going to move to strike that answer and then I was going to get the transcript before I made any motion.

The Court: You may proceed.

By Mr. Williams:

Q. With the exception of that one time, did you strike Mr. James?

A. I never laid a hand on him.

Q. Did any other person in your presence strike him or use any force or violence against him?

A. Not to my knowledge.

Q. That was in April?

A. No, sir.

Q. Or use any force?

A. No, sir.

Q. Now, recalling the time that you struck him, was he further interrogated by you?

A. Yes, sir.

Q. And was he questioned by other persons in your presence?

A. Yes, he was.

Mr. Clark: That is objected to.

The Court: Was there an answer?

A. Yes, he was.

[fols. 1115-1116] The Court: Objection overruled,—or rather objection sustained.

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[fol. 1117] Mr. Clark: The witness is so obviously hostile that I think my examination is cross-examination and counsel's examination is redirect examination.

Mr. Williams: I move—

Mr. Clark: I don't—

The Court: There is nothing in the record at the present time to show that the witness is hostile. It is true he is produced by the District Attorney, and works for the District Attorney, but there is nothing to show that he is hostile.

[fol. 1118] Mr. Clark: If there is no hostility when an officer having a man in custody strikes him, I don't know what would be.

The Court: I think an officer may very well have a man in custody, and still be anything but hostile.

Mr. Clark: Yes, he can, but when he strikes him that is a manifestation—

The Court: We don't want to argue that matter. We all have our own opinion of what we would do under circumstances such as related by the witness. Whether that is subject to criticism is something to argue to the jury at a later time.

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[fol. 1119] By Mr. Williams:

Q. Did the defendant, after the time you slapped him in the face, and when you had him in custody, in the month of April, say anything with reference to whether he had, or had not, killed or attacked or injured his wife, Mary?

Mr. Clark: That is objected to upon the ground that it [fol. 1120] is incompetent and irrelevant to the subject now under inquiry.

The Court: Objection overruled; you may answer.

A. No, sir.

By Mr. Williams:

Q. Now, Mr. Clark asked you a number of questions as to which he didn't fix any specific day, about you having the defendant in custody, and what happened during that time, and I want to ask you now whether, except in those cases in which you specifically stated, or the questions specifically stated that it was the 2nd of May, were your answers all directed to the time that you had him in custody on the 19th, 20th and 21st days of April of this year?

A. To the April occasions.

Q. Now, Captain Southard, on the 2nd of May when you first saw James up in the County jail, in whose company were you?

A. I had Charles Hope handcuffed to me.

Q. Was anybody else with you?

A. Yes, Officer Scott Littleton.

Q. And when you first saw James, in whose company was he?

A. Deputy Sheriff Killion.

Q. And did you speak to him, or did anybody else in your presence speak to him, prior to the time that Mr. Lynch, the statement reporter, entered the Chaplain's office, where the statement was taken?

A. No, sir.

[fol. 1121] Q. During that time, so far as you saw the defendant, was there any force or violence used upon him?

A. There was none.

Q. Any threats made toward him?

A. There were not.

Q. Were there any offers or promises of immunity or reward, or hopes of reward extended to him?

A. There were none.

Q. Were the statements made by him at that time made freely and voluntarily?

A. It was.

Mr. Williams: That is all.

Redirect examination.

By Mr. Clark:

Q. By the way, where did you get the title "Captain"?

Mr. Barnes: I can't hear your question?

The Court: I can't hear it.

Mr. Clark: I asked him where he got the title "Captain".

Mr. Barnes: I submit it is not material.

The Court: I couldn't hear the question yet?

Mr. Clark: I asked him where he got the title "Captain". Counsel very carefully referred to him as "Captain Southard". I assume it was done for a purpose.

The Court: You might ask Mr. Williams. He is the one who asked it.

[fol. 1122] Mr. Clark: I assume he inherited it.

Mr. Williams: No, that is not true. He is a Captain of Detectives, officially designated as Captain of Detectives in the District Attorney's office of Los Angeles. I didn't give him the title. He earned the title by doing good work.

Mr. Clark: May I ask to have Mr. Williams sworn, your Honor.

The Court: You may put him on the witness stand later, if you wish. Any further examination of this witness?

Mr. Clark: Oh, there is one thing further:

Q. Now, you spoke about taking Mr. James from the house where he was living to the house adjoining where he was living, where you had some Dictagraph.

A. Where we had the receiving set of the Dictagraph.

Q. Who was with you at that time?

A. There was quite a crowd. There was a number of newspaper men. Mr. Fitts was there, and Deputy District Attorney Eugene Williams, Scott Littleton, Everett Davis, I believe was there, and Harry Dean.

Q. Do you mean that all those people were there at the time the arrest was made?

A. Well, I had quite a crowd out there to make the arrest, yes, sir; it was quite a large house to cover.

Q. When he was taken over there, and shown that house, didn't you say to him, "Well, now, you see these Dictagraphs. You see we have got the goods on you. You might [fol. 1123] as well admit you murdered your wife."?

A. I did not.

Q. Did any one, in your presence?

A. No, sir, they did not.

Q. So far as you know, that was not said at all?

A. That was never said at any time.

Q. You are sure of that?

A. Not in my presence, anyway.

Mr. Clark: That is all.

Mr. Williams: That is all, Captain.

Mr. Clark: I will have to call Mr. Silverman, I regret, for some questions.

SAMUEL J. SILVERMAN, called as a witness in behalf of the Defendant, being first duly sworn, testified as follows:

The Clerk: State your name, please.

A. Samuel J. Silverman.

Direct examination.

By Mr. Clark:

Q. Mr. Silverman, you are the attorney for Mr. James, the defendant in this case?

A. I am one of the attorneys.

Q. Well, you have been his regular attorney in civil business for some years last past?

A. For some years, yes.

[fol. 1124] Q. And have been representing him, either by yourself, or in conjunction with others, in all of his legal matters for several years?

A. That is right.

Q. Now, I will ask you whether or not—it is in evidence here, I believe, that he was delivered to the County jail here about the 21st of last April. Did you see him on or about that date?

A. Not on that date.

Q. About how soon after that did you see him?

A. Possibly four or five days after that.

Q. That would be along about the 25th of April?

A. Right.

Q. Did you have any occasion to note his physical appearance and condition at that time?

A. I did, for several days after that.

Q. What did you note in regard to it?

A. Both of his ears were blue and swollen.

Q. Now, referring to a period approximately a week later than that, did you give him any instructions in regard to what course he should pursue if he were interrogated by any officers with relation to the circumstances attending the death of his wife?

Mr. Williams: That is objected to as calling for hearsay.
The Court: Overruled.

A. Yes.

[fol. 1125] Mr. Clark: What instructions did you give him?

A. Information came to me that——

The Court: No, answer the question.

Mr. Clark: Just tell what you said to him.

A. I called on him in the attorney's room of the Los Angeles County jail, and told him upon being questioned by anybody, any official or otherwise, with reference to a murder charge, not to answer any questions unless it was in my presence.

Mr. Clark: You may cross examine.

Cross-examination.

By Mr. Williams:

Q. Mr. Silverman, as a matter of fact you saw Mr. James in the Grand Jury room, in the outer room of the Grand Jury, where the witnesses sit, on the 22nd day of April, didn't you?

A. I don't think, Mr. Williams, that I ever saw him near the Grand Jury room. Wait a minute——

Q. Would you say he appeared before the Grand Jury——

A. Wait a minute. No, I saw him in one of the investigating rooms, I think, one of the offices of the District Attorney's office, was the first time I saw him after his arrest.

Q. That was on the 22nd of April, wasn't it?

A. I don't recall just what date that was.

[fol. 1126] Q. I was mistaken. It was the 21st of April, was it not, Tuesday, the 21st of April, 1936?

A. Now, let's see. I think the arrest happened—he was taken into custody on a Saturday. Am I right?

Q. On a Sunday.

A. Wasn't it Saturday night?

The Court: It has been testified it was the 19th. That was on Sunday.

Mr. Williams: Sunday morning.

A. That was on what charge? The morals charge?

Q. Yes.

A. Well, I didn't see Mr. James after that for about four or five days, I am quite sure of that.

Q. Don't you remember having appeared in Department 41 of the Superior Court when he was arraigned on the 21st of April, 1936?

A. That is right.

Q. And prior to seeing him in Department 41, you saw him when he was down before the Grand Jury?

A. No, I don't think he was before the Grand Jury, Mr. Williams. You are mistaken about that. I think I saw him right after the investigation had closed, when they made the formal arrest, and it was in this regard that I asked Mr. Fitts, the District Attorney of this County, to permit me to see——

Mr. Williams: Just a minute; we are not interested in——
[fol. 1127] A. Just a minute; I am answering your question.

The Court: Just a minute, please.

A. I am explaining.

The Court: Mr. Silverman. When the Court says "Please stop", please stop.

A. I don't know, your Honor, just what is expected of me.

The Court: Are you going to run this courtroom, or am I?

A. No, your Honor.

The Court: If there is any argument about it, I can tell you who is.

A. Well, your Honor——

The Court: Now, Mr. Silverman, will you please be quiet, and wait for a question.

Mr. Williams:

Q. Didn't you first see him after he was arrested on the morals charge on the 21st day of April, 1936?

Mr. Clark: Now, just one moment. I object to that on the ground that it contains irrelevant matter, assumes facts not in evidence, and is immaterial.

The Court: Overruled.

A. I don't know what date that was, Mr. Williams. However, I can explain it, if you wish me to.

[fols. 1128-1129] Mr. Williams: If I desire you to explain it I will ask you the question.

A. I think I have a right to explain an answer, your Honor, after I have answered "yes" or "no".

The Court: Just a minute. You are a witness at the present time. Mr. Clark is capable of making any argument that is necessary. We will get on much better if you don't make any argument.

Mr. Williams: I have no further questions.

Mr. Clark: That is all. Mr. Silverman has indicated a fact to me, your Honor, of importance——

The Court: Put him back.

Mr. Clark: —that I would like to put him back in regard to.

Q. Mr. Silverman, after Mr. James was arrested, I think it is shown that the arrest was the 19th of April, did you make any attempt to see him?

A. I did.

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[fol. 1130] ROBERT S. JAMES, called as a witness in his own behalf, being first duly sworn, testified as follows:

The Clerk: State your name, please.

The Witness: Robert S. James.

The Clerk: What is your right name, please?

The Witness: That is the name I have been using for the past 20 years.

Direct examination.

By Mr. Clark:

Q. Mr. James, you were taken into custody, I believe, by investigators of the District Attorney's office on the 19th of April of this year. That is correct, isn't it?

A. Yes.

Q. And did you have any hernia or rupture at that time?

A. I did not.

[fol. 1131] Q. Have you now?

A. Yes.

Q. When did you become ruptured?

A. The night of the 21st of April, I believe.

Q. Where were you when you became ruptured?

A. I was on La Salle Avenue next door to the home where I lived.

Q. How did you become ruptured?

A. A long terrific beating that I was taking from Jack Southard and Charlie Griffen.

Q. Had anything been said to you by them or either of them before the beating commenced?

A. Yes.

Q. About what time did they commence beating you?

A. Well, they started Monday night, I think, about 10 o'clock.

Q. And about what time did they take you into custody?

A. Sunday morning about 9 o'clock.

Q. Now, state whether or not, after taking you into custody, they interrogated you or questioned you in regard to your wife's death?

A. That was the first thing they asked me.

Q. Who first spoke about it to you?

A. Williams did.

Q. You mean Mr. Eugene Williams, the Deputy District Attorney?

[fol. 1132] A. Yes, sir.

Q. Where were you when he spoke about it?

A. I was in my own home on La Salle street.

Q. And who else was present at that time?

A. Well, I think every officer that I ever saw around there was there.

Q. You don't know who they were?

A. There looked like there were 13 or 14 of them.

Q. Well, how long was it after you were taken into custody until you were taken over to the other house?

A. I think about an hour.

Q. And did anyone say anything to you there about your wife's death?

A. That is about all they did say anything about.

Q. Well, do you remember when they—do you remember any time when you were shown any dictaphones?

A. Yes, sir.

Q. Do you remember anything that was said about your wife's death at that time?

A. Yes, sir.

Q. Who was the speaker?

A. Southard and Charlie Griffen.

Q. What was the statement at that time?

A. They told me that I might as well confess to my wife's murder, that they had the case on me and that they overheard my conversations in regard to my wife's death.

[fol. 1133] Q. As near as you can remember is that all that they said then?

A. Well, they said so many things that I cannot remember all that they said.

Q. By the way, at the time they made the arrest, was Mr. Silverman present?

A. No.

Q. Was any person representing you present?

A. No.

Q. After taking you to the house, where this first conversation occurred, where did they next take you?

A. They took me to the District Attorney's office.

Q. About how far was the place where you lived from the District Attorney's office?

A. Well, I wouldn't know how far to say, but out on La Salle Avenue.

Q. I beg your pardon?

A. I wouldn't just say how far it is.

Q. Couldn't you give us an idea.

Mr. Williams: We can stipulate about 7 miles.

Mr. Clark: About 7 miles.

Q. How were you conveyed to the District Attorney's office?

A. I think they took me in the police car.

Q. Who rode with you, if you know?

A. I don't remember the officers that rode with me, now.

Q. Well, was anything said to you concerning your wife's [fol. 1134] death, while you were riding?

A. I don't remember.

Q. Well, didn't—I withdraw that. When you reached the District Attorney's office, were you taken to Mr. Fitts' room directly, or to some other part of the building?

A. I was taken back to the Bureau of Investigation.

Q. How long were you kept there?

A. Well, it seemed to me I was kept there two or three hours.

Q. Do you know who was there with you, if anyone?

A. Well, there were several officers there. I think Mr. Littleton was there and I think a man that operated the dictaphone was there and there was another man there at two or three different times.

Q. Now, was anything said to you while you were there?

A. No, they didn't talk to me much while I was there.

Q. And after being in the Bureau of Investigation some time, you were taken to Mr. Fitts' room?

A. Yes, sir.

Q. And you saw a number of men there?

A. That is right.

Q. And at the time, before being taken to Mr. Fitts' room, did you ask to have your attorney communicated with?

A. Yes.

Q. And whom did you first ask in regard to that?

A. I asked the arresting officer.

[fol. 1135] Q. When?

A. Sunday.

Q. Did you state whom your attorney was?

A. Yes, sir.

Q. Did you ask to have him communicated with at any time after the time of your arrest?

A. Yes.

Q. When did you next make the request?

A. I asked them again the night they were taking me up to the District Attorney's office to question me in regard to my wife's death.

Q. Now, at the time that you made that request, did you know Mr. Silverman's telephone number?

A. I had his office number.

Q. Did you give that office number to anyone and request that he be communicated with?

A. I gave it to Mr. Fitts.

Q. You gave it to Mr. Fitts?

A. Yes, sir.

Q. Did you ask Mr. Fitts that you might have your attorney present?

A. Yes, sir.

Q. And what did Mr. Fitts say, if anything?

A. He said he called Mr. Silverman and found that he was out of town and then I asked for Mr. Parsons and he said that Mr. Parsons didn't know anything about the case [fol. 1136] and it would take too long to look the transcript over and he couldn't see me.

Q. Then they started to question you in the District Attorney's office?

A. Yes, sir.

Q. And now, prior to your getting to the District Attorney's office, were any threats in the District Attorney's office made to you in connection with you making or not making a statement?

Mr. Barnes: That is objected to as calling for a conclusion of the witness?

The Court: Overruled.

A. You mean in regard to my wife's death?

By Mr. Clark:

Q. Yes.

A. Read the question again, please?

(Question read by the reporter.)

Mr. Clark: May I reframe that question? That is not what I intended to ask.

Q. Mr. James, before you reached the District Attorney's office did anyone make any threats in connection with your making any statement concerning your wife's death?

[fol. 1137] Mr. Barnes: That is objected to on the ground it calls for a conclusion of the witness.

The Court: Overruled.

Mr. Barnes: We have no objection to what was said.

The Court: I think the form, as to whether there were any threats, or statements of that sort used, and as to whether the statement was voluntary—

Mr. Barnes: As to being free and voluntary—very well, your Honor.

The Court: —basically they do call for a conclusion, but I think they are properly called for.

Mr. Clark: It is like one of those conclusions of fact, your Honor, like a man being drunk. Go ahead, Mr. James.

A. Well, I was threatened¹⁸ when I was first arrested on the murder charge, and I was threatened when they took me to the District Attorney's office.

Q. Well, there is some confusion. I am referring now to the day of your arrest, and to the period before you reached the District Attorney's office on that day. Weren't you taken to the District Attorney's office an hour or so after you were arrested?

A. On what charge?

Q. Never mind what charge. When the officers first took you into custody, didn't they take you to the District Attorney's office in an hour or two?

A. Yes.

[fol. 1138] Q. Now, during that hour or two, when you had been taken into custody, and before you were taken to the District Attorney's office, were any threats used upon you, in connection with any statement, or refusal upon your part to make a statement concerning your wife's death? Just answer that "yes" or "no".

A. Yes.

Q. Who made those threats?

A. Mr. Southard, and Charlie Griffen.

Q. And what threats did each of them use?

A. Well, when they arrested me, and taken me next door, they told me that they were of the opinion, and had known about my killing my wife, and I had just as well confess it to them, or they were going to beat the Hell out of me.

Q. Now, were any more threats made by any one before you reached the District Attorney's that day?

A. I don't remember.

Q. Very well. Now, note carefully the question: Was any promise made, or any statement made of any advantage that you might gain, if you would make a statement concerning your wife's death, before you reached the District Attorney's office on the day you were arrested, personally?

The Court: You may answer that "yes" or "no", first.

A. Well, no; it was after.

By Mr. Clark:

Q. Now, after you reached the District Attorney's office, and before you were taken into Mr. Fitts' room, did any [fol. 1139] person make any statement to you concerning any advantage, either then or thereafter, that you might gain, if you would make a statement concerning your wife's death?

A. Before I had reached the office?

Q. Before you reached Mr. Fitts' room?

A. No.

Q. Now, when you were in Mr. Fitts' room, was any statement made there concerning any advantage which you might gain, or any punishment you might escape if you made a statement concerning your wife's death?

A. No.

Q. While you were in Mr. Fitts' room were any threats of any kind made?

A. Not at that time.

Q. Were any threats made in the District Attorney's office while you were being taken to Mr. Fitts' room?

A. Not that I remember.

Q. Just a moment. Now, during the time you were there in Mr. Fitts' office, did you tell—I believe I misstated that. Now, while you were in Mr. Fitts' office, were any questions asked you regarding your wife's death? I refer now to the first time that you were in Mr. Fitts' office.

A. Why, yes, they questioned me about her death.

Q. And will you state whether or not you told him that you did not want to discuss it?

[fol. 1140] A. Yes, I told him I didn't want to discuss it.

Q. When you told them that, they kept on questioning you?

A. They questioned me quite a little while.

Q. You mean by that they didn't stop?

A. No.

Q. About what time of day was it when you left the District Attorney's office?

A. That day?

Q. Yes.

A. I think it was along in the afternoon, 4:00 or 5:00 o'clock.

Q. And I believe you have already told us you were taken down to the house next to the house where you had been living?

A. That is right.

Q. And were handcuffed while you were being taken there?

A. No.

Q. Do you know who went with you down to that house?

A. I think Mr. Southard and Charlie Griffen were taking me down there.

Q. And upon reaching there, what did they do? What did they do?

A. Well, they took me in and set me down, and pulled down the shades in the house, and began to question me.

Q. What were they questioning you about?

A. My wife's death.

[fol. 1141] Q. And did you answer those questions?

A. I did answer everything they asked me.

Q. And then what happened?

A. Well, they kept that up, I think, until Wednesday morning, but the record says Tuesday, so they kept it up until Tuesday morning constantly.

Q. And Mr. Griffen and Mr. Southard were there with you all the time?

A. No, they were not there all of the time. They had, I think, 15 or 20 officers took me on reliefs about every three hours.

Q. Well, what time did they allow you for sleep?

A. I didn't get any sleep.

Q. Now, during the course of the conversations, did they offer you any reward, or anything of value, or make any promise to you of anything, of any gain that you might get if you would make a statement implicating yourself in your wife's death?

Mr. Barnes: Just a minute. That is objected to, if the Court please, on the ground that it is indefinite as to which particular time counsel is inquiring about, and it is in the course of the confession.

The Court: I think that did have that tendency, Mr. Clark.

Mr. Clark: I asked that inadvertently, and I did not intend to, and the question is withdrawn.

[fol. 1142] Q. In the course of the conversation is what I intended to say, before you were brought to the County jail, at that house, and after you had been at the District Attorney's office, did any one hold out any hope of reward, or promise of immunity, or any advantage of any sort, that you might gain, if you would make some statement implicating yourself in your wife's death?

A. Well, Mr. Williams—

Q. What did Mr. Williams say?

A. Well, he told me that they had enough stuff on me to hang me, and that they were going to hang me for it, and that he had the authority to give me a lighter sentence

if I would come clean and tell him the full story about it. He told me that if I would tell him the truth about it that he could get me a life sentence, and that he might get me off at manslaughter, if I would tell him the story.

Q. Now, about what time of day or night did this conversation with Mr. Williams occur?

A. Well, it was way in the night; I think maybe 3:00 or 4:00 o'clock in the morning.

Q. And it was a Sunday, as I understand, that you were taken into custody?

A. That is right.

Q. And this was along in the early hours of Monday morning?

A. It was either Tuesday morning or Wednesday morning.

[fol. 1143] Q. Now, you spoke about Mr. Southard and Mr. Griffen using physical force on you. Will you tell us how that came about?

A. Well, they had been questioning me every minute, the same questions over and over, since I had been there. And either Monday night, or Tuesday night—I have the two days confused—about 10:00 o'clock he was trying to get me to admit that I spent the night with some woman in the hotel on the 11th of August, and I didn't know what he was talking about.

Q. Who was talking?

A. Mr. Southard. Finally he said that I was lying like a dog, and he began to beat me.

Q. How long did he continue to beat you?

A. He jumped over and began to beat me, and I got hold of him, and he stopped, and then he jumped over and began beating me again. When I stopped him, Charlie Griffen knocked me loose. I told them that I had answered every question, and I didn't know what they were talking about when they were talking about this woman. And he began to question me about it again, and then several minutes later he did it again, and I grabbed hold of him again, and Charlie Griffen knocked me loose. I said, "There is no use to beat me." I told them if they wanted me to say that I stayed in the hotel with this woman I would say it. They were not satisfied with that. If they asked me a question, [fol. 1144] and if I answered it, he hit me, and if I attempted to explain, or did not answer, he would hit me. And he turned me over in that chair several times.

Q. Now, finally what did you do, as the result of the physical force that was used upon you there?

A. Well, they finally quit beating me sometime in the night, and then Mr. Williams takes hold of me and told me if I confessed I would get less punishment, and that I might get a life sentence. I told him that I couldn't tell him anything about it.

Q. And how long after talking to Mr. Williams, how long was it after that that you were taken to the County jail?

A. About the time that Mr. Williams got through talking to me I collapsed, and I didn't know anything until the next day.

Q. You mean that you fainted?

A. Yes, I fainted, or passed out.

Q. At what time the next day, as near as you can tell us, was it that you regained consciousness?

A. Well, I came to the next morning. I think it must have been 8:00 or 9:00 o'clock.

Q. Were you at the same place?

A. Yes, sir.

Q. Were the same people there?

A. Well, I don't just remember who was there. There was an officer named Davis there. Whether Mr. Southard [fol. 1145] and Griffen were there, I don't know.

Q. Now, were any further threats made to get you to make a statement concerning the facts of your wife's death while you were at the house—we have got to the point now where you regained consciousness—

Mr. Barnes: As to the form of the question it is objectionable.

The Court: Yes, it is objectionable. You can change the question.

Mr. Clark: Yes, your Honor.

Q. Were any further questions asked you by any one concerning the circumstances of your wife's death, after you regained consciousness, and before you were taken to the County jail?

A. Well, I was pretty groggy when I regained consciousness, and I hardly remember what was said there.

Q. And then you were taken to the County jail, as I understand it, about the 21st of April, and remained there, except when you were taken out to court and the Grand Jury, until the 2nd of May, is that about as you remember it?

A. Yes.

Q. And on the 2nd of May you were taken into the Chaplain's room, Mr. Southard, Mr. Griffen, and Mr. Killion, and Mr. Lynch—is that the name?

Mr. Barnes: Lynch was the court reporter.

Mr. Clark: Yes, Lynch was the court reporter.

[fol. 1146] Mr. Williams: May I interrupt, Mr. Clark? While I haven't any objection to the asking of leading questions, I think at this time the witness should be required to make his own statements instead of simply answering "yes" or "no" to counsel's statements.

Mr. Clark: I tried to avoid leading questions except in a matter such as this, where I believe the question is purely preliminary and I was asking it in the interest of time.

The Court: You may proceed. If there is any objection to your questions we will take the objections up as they come.

Mr. Clark: Is that right? Do you remember the incident, whatever date it was?

A. I remember going to the Chaplain's room, yes.

Q. And did you see Mr. Griffen and Mr. Southard there at that time?

A. Yes.

Q. Did you recognize them?

A. I did.

Q. Will you state whether or not you still had a memory of the physical force that had been used upon you before?

A. I will always remember that.

Q. Will you state whether on that second of May you were still suffering pain from the injuries you had received?

A. I was.

Q. At the time you were taken to the jail, besides this hernia, did you have any marks or bruises on you as the [fol. 1147] result of the force that had been used?

A. Do you mean when they first put me in jail?

Q. Yes.

A. Yes, I was black and blue from my waist up.

Q. Was any part of your head or face injured?

A. Yes, both of my ears were swollen so that I couldn't hear.

Q. What was the condition of your ears on this day when you were taken to the Chaplain's room?

A. I think my ear was still black then.

Q. By the way, had Mr. Silverman, before you were taken to the Chaplain's room, given you any instructions as to

what you should do if you were questioned further by the officers?

A. He had.

Q. What instructions did he give you?

A. He told me I was going to be indicted for murder and if the officers questioned me to tell them that I wouldn't talk unless he was there.

Q. When Mr. Silverman told you that you were going to be indicted for murder, did you believe that you would be?

A. I did.

Q. Now, when you were taken into the Chaplain's room, what effect upon your mind did the presence of Mr. Southard and Mr. Griffen there have?

A. Well, I thought I was in for another beating.

[fol. 1148] Q. And did you feel free to talk in their presence?

A. I did not.

Q. Now, what effect did Mr. Silverman's instructions have upon your mind? Did you feel that you should follow those instructions?

A. I felt that I should do just what he told me.

Q. Then taking the circumstances as they existed at the time you were in that room when Mr. Williams told you what he claimed Mr. Hope had said, did you feel free, under the circumstances as you knew them to deny the truth of the statement that Mr. Williams communicated?

A. I was afraid to deny it.

Q. And now, do you recall a second occasion when you were taken to the District Attorney's office?

A. I do.

Q. With relation to the time you were in the Chaplain's room, when was this second occasion?

A. It was on a Saturday; I don't remember the date.

Q. Do you remember whether it was the same day, before that day or after the day that you were in the Chaplain's room?

A. It was the same day I was taken to the Chaplain's room.

Q. About what time of day was it you were taken to the District Attorney's office?

A. I think it was shortly after noon.

[fol. 1149] Q. Who took you over there?

A. I believe Mr. Gray took me over there; I am not sure.

Q. He is one of the deputy sheriffs, is he?

A. He is.

Q. Works with Mr. Killion?

A. He does.

Q. And now, to what part of the District Attorney's office were you first taken?

A. I was taken to Mr. Fitts' office.

Q. And did you, at any time, see Mr. Southard there?

A. Yes, he was there.

Q. When did you see him?

A. He was there practically all the time I was there.

Q. And when you reached Mr. Fitts' office, besides Mr. Southard, was there anyone else in there that you remember?

A. Yes, sir.

Q. Who else did you remember being in there?

A. I remember Charlie Griffen being there and most all the officers that I had seen were there.

Q. And now, will you state whether or not at any time you had a conversation with Mr. Southard in which just you and Mr. Southard took part?

A. State what the conversation was?

Q. No, just state whether you had such a conversation first.

A. I did.

[fol. 1150] Q. With reference to the time you were taken into Mr. Fitts' office when did that conversation occur?

A. It occurred about 10 o'clock that night.

Q. Where were you?

A. I was in one of the offices there; I don't know whether it was Mr. Fitts' office or the one next to it.

Q. Was anyone else present besides you and Mr. Southard?

A. No, they all cleared the room and left me with him.

Q. What did Mr. Southard say to you then?

The Court: Just a moment, do I understand that this is subsequent to the matter the admissibility of which is involved?

Mr. Clark: Yes, your Honor. In going into matters subsequent to that I directed your Honor's attention to that specifically, the thought that a subsequent statement to the date which this evidence relates would come before your Honor sooner or later, and unless counsel objected, I would go into it now.

The Court: Strictly speaking this is not voir dire testimony now.

Mr. Clark: No, it is not.

The Court: You may proceed.

Mr. Williams: May I make a statement? I don't object to it because I anticipated we could clear the entire matter up before the other statements were offered.

Mr. Clark: I think the Court was just trying to clear up [fol. 1151] the entire matter. We talked in chambers this morning and I think the Court agreed with me.

* . . . * . . . * . . .
[fol. 1152] (Question read by the reporter as follows: What did Mr. Southard say to you then?)

A. I sat at the desk and he said to me, "You have been sitting here lying to Fitts all evening just like you lied to me when I had you out at the house." He said, "I didn't have the dope on you then, but I have got it on you now," and he said, "You are going to tell the truth here now or I am going to take you back to that house and I am going to beat your God damned head off."

Q. Did you make any answer to that?

A. I told him that I was ill from the beating that I had taken before, that I wasn't able to take another beating and [fol. 1153] that if he wanted me to say what he was relating to me in Hope's story there that I would gladly admit it and have myself other punishment.

Mr. Clark: If your Honor will pardon me, there was one matter testified to by Mr. Southard that I didn't hear distinctly.

Q. Mr. James, it was testified to earlier today that in a conversation with Mr. Southard that you said to him in effect that your wife was nothing but a prostitute before you married, and that he struck you for that reason. Did you make any such statement in substance or effect to him?

A. I did not.

Mr. Clark: That is all.

Cross-examination.

By Mr. Williams:

Q. Mr. James, following the time that you say Captain Southard and Mr. Griffen beat you at the house, did you

make any confession to them or either of them of any crime?

A. No, I didn't admit any crime to them.

Q. And prior to the time that I appeared in the Chaplain's office in the county jail with Charles Hope and Captain Southard and Mr. Griffen and Deputy Sheriffs Killion and Gray and Mr. Lynch, the statement reporter, did anybody at that time tell you that you were going to be beaten, or threaten you in any way before I made the statement and you answered certain questions?

[fol. 1154] A. They didn't tell me they were going to beat me when they took me in there.

Q. Didn't offer you anything of any sort, did they?

A. Not in there.

Q. As a matter of fact, there wasn't anything said to you by anybody until Mr. Lynch, the statement reporter who was on the stand this morning, sat down with his notebook open and then the first question that was asked you was after he sat down, wasn't it?

A. No, the first thing was said to me when I walked in, you were talking to me.

Q. The first thing I said to you was, "Do you know this man Chuck Hope?" that was the first thing that was said to you, wasn't it?

A. I don't think that is the first thing you said to me.

Q. What is your recollection?

A. My recollection of the first thing that you said to me when I walked in that room you said, "Mr. James, you told me when I was out at the house questioning you about your wife to tell you how she got in that fish pond, that you couldn't tell me." You said, "Now, I am going to tell you." and after sitting there a few seconds Hope entered the room and you asked me if I knew Hope, and I told you I did.

Q. Yes. Now, after you had made the statement everybody went out of the room and you were returned to your cell in the jail, were you not, or your tank in the jail?

[fol. 1155] A. That is right.

Q. And you were taken from the tank by Deputy Sheriff Killion and returned to the tank by Deputy Sheriff Killion?

A. I don't know whether it was him or Gray, one of them.

Q. Either him or Gray or both of them?

A. Yes.

Q. Then later that same day you were taken out of the county jail by Killion and Gray?

A. Yes, I think they were the ones.

Q. And Killion and Gray stayed with you during the balance of the time, all the time that you were out of the county jail until they returned you to the county jail, did they not?

A. No.

Q. Was there any time when they weren't with you?

A. Yes.

Q. What time?

A. At the time you fellows cleared the room for Mr. Southard to question me.

Q. I wasn't there any day that you were questioned in the District Attorney's office on the 2nd of May, was I, after you were taken out of the jail?

A. I couldn't say positive that you were there, but nearly all the officers I had seen were there that night.

[fol. 1156] Q. Mr. Fitts and Mr. Stewart were there, were they not?

A. I don't know if I know Mr. Stewart.

Mr. Clark: Will Mr. Stewart stand up?

(Mr. Stewart stands.)

Mr. Williams: Do you recognize Mr. Stewart?

A. I don't think I do.

Q. Mr. Fitts and Mr. Stewart were there, and there was no time when Mr. Gray and Mr. Killion were not there, was there?

A. There was nobody in the room when Mr. Southard questioned me but him.

Q. As a matter of fact, you told Mr. Fitts on that occasion that the entire District Attorney's office couldn't make you talk, and wouldn't have been able to make you talk, except that Hope told his story, so you were going to talk? Isn't that a fact?

A. No.

Q. Now, let me direct your attention to a transcript here—

Mr. Clark: May I see it?

Mr. Williams: Yes, Mr. Clark. Just this question and answer, and I ask you not to examine anything but that.

Mr. Clark: I shall examine just what you are asking about.

Mr. Williams: Just this question and answer; that is all.

Mr. Clark: Pardon me, Mr. Williams, is it this part?
[fol. 1157] Mr. Williams: Yes, it is right there.

Mr. Clark: I infer that the portion to which you direct my attention, Mr. Williams, is a part of the transcript of the notes that were taken in the conversation which the defendant testified occurred after the talk between him and Mr. Southard?

Mr. Williams: That is correct.

Mr. Clark: I wish to object to any use of it on the ground that it is incompetent. You can't establish that the confession was free and voluntary by showing what was said in the statement; I don't call it a confession; you can't show that it was free and voluntary by reading it, or reading part of it.

Mr. Williams: If your Honor please, I submit that that is one of the best ways in the world to show that a statement is free and voluntary. If the defendant, in the course of the statement, makes statements which indicate clearly the motives which impel him to make his statement, and those motives are other than threats or violence, that fact, it seems to me, must be very pertinent, for the Court to determine, and for the jury to determine whether any confession he did make was the result of any force or violence used, or whether it was caused by other things.

Mr. Clark: If that were true, you could beat the life out of a man and overcome testimony as to the beating that he got by proving that he said his statement was free and [fol. 1158] voluntary when it was made immediately after the beating and as a result of the beating. I can't feel that that is the law.

Mr. Williams: This goes beyond that, your Honor.

The Court: I think it becomes a question of fact that we can't determine without getting this evidence. Usually at the end of all of these statements there appears a declaration that the statement is made freely and voluntarily. Of course, if the entire statement as a whole was the result of undue influence, either by threats, or promise, or violence, we might come to the conclusion that that statement was also a product of that same inducing cause, but the fact the witness did make that statement can be considered. It goes to the weight rather than to the admissibility. The objection will be overruled.

By Mr. Williams:

Q. Now, Mr. James, I call your attention to the fact that this statement is a statement taken in the presence of District Attorney Fitts, Chief Deputy District Attorney Robert S. Stewart, C. L. Plummer, Chief of the Bureau of Investigation, Charles Griffin, Assistant Chief of the Bureau of Investigation, Jack Southard of the Bureau of Investigation, Everett Davis of the Bureau of Investigation, Deputy Sheriff Killion, Deputy Sheriff B. B. Gray, and Dorothy Adams, reporter, taken in Mr. Fitts' office in the Hall of Justice, beginning at 1:55 A. M. May 3rd, 1936, and I particularly call your attention to the portion of it which I will [fol. 1159] just lightly mark here, and direct your attention to the fact that the "he" referred to in this question is Charles Hope, and ask you whether at that time the following question was not asked, and the following answer given by you: "That is what he told you? (meaning Hope) A.— Yes, I said, 'What did you do with her, leave her in the bath tub?', and he said, 'No, I threw her in the fish pond.' I said, 'That won't stick; they will throw me in the jug when they find her. I will be a good sport. You made a God damn fool of yourself and me both, but I will take the rap. I won't talk. There ain't enough men in the District Attorney's office to make me talk.' and there wasn't if he hadn't told it. You never would have got me to talk, so of course I arranged with this couple to go home with me." Did you make that statement there?

A. After Mr. Southard there had told me——

Q. Just answer the question "yes" or "no".

Mr. Clark: Now, I submit, if your Honor please——

A. At that particular time, yes.

The Court: The witness can answer the question first, and then you can take the matter up on redirect examination and get any additional answer he desires to make.

Mr. Clark: Before we proceed, it is my understanding that where a part of a statement or conversation is used, that the other side have a right to such other parts as may [fol. 1160] tend to throw light upon that which has been used. Mr. Williams handed me his copy of the transcript, and submitted only this one statement. May I not have a right to inspect all of his transcript, to see whether there are other portions which I wish to use for the light they may throw on this?

The Court: I think you are probably confusing the rule which applies with another rule. Mr. Williams could have very properly asked the witness the question, reading it to him, without ever showing it to him, purely as a matter of cross examination. You could, on redirect examination, ask for any further part of the conversation shedding light on the matter.

Mr. Clark: Yes, but where Mr. Williams shows a certain portion of the transcript for the purpose of framing accurately the question that he asks, haven't we the right to inspect the whole of the transcript?

The Court: I think not, except in those cases where the document was signed by the witness, and made his own, or where the witness thereafter read it and acknowledged it, or something of that sort. In other words, up to the present time it remains the District Attorney's memorandum.

Mr. Williams: Yes, it is simply a memorandum.

Mr. Clark: Probably your Honor is entirely right, and certainly right for all purposes in this case.

Mr. Williams:

Q. Now, Mr. James, it is a fact, is it not, as stated by you, [fols. 1161-1165] that the only reason that you ever told details of the death of your wife, Mary James, was because this man, Charles Hope, to your knowledge, had made a statement implicating you, and you desired to implicate him also?

A. No.

Q. That is not the fact?

A. No.

Q. Mr. James, have you been convicted of a felony?

Mr. Silverman: Just a moment.

The Court: Do you have an objection?

Mr. Clark: There is no objection.

Mr. Williams: Answer that question.

A. Yes.

Q. You were convicted of three felonies in the Superior Court of this County, were you not?

A. Correct.

Q. And those felonies were the crimes of incest?

A. Yes.

.

[fol. 1166] By Mr. Williams:

Q. Isn't it a fact that when you went out to the premises - [fol. 1167] at 3886 La Salle Street, next door to where you lived on the 19th of July, after you had been taken to the District Attorney's office about the 19th of July, whether Captain Southard and Mr. Griffen left you and they didn't talk to you until 3:00 or 4:00 o'clock in the morning, didn't talk to you at 10 o'clock that night at all?

A. The officers were in and out of there so often—

Q. Just answer the question "yes" or "no".

The Court: Do you want the question read again? Please read it, Mr. Reporter.

(Question read by the reporter.)

By Mr. Williams:

Q. In other words, they didn't talk to you at 10 o'clock that night as you have previously testified?

A. I don't remember when they left there.

Q. Now, you said you had a conversation with me. You had that conversation with me on the night between the 20th and 21st of April, did you not?

A. I had two conversations with you.

Q. At your house I mean, referring to conversations at your house.

A. Yes, sir.

Q. And you had only one conversation at that house?

A. The only one I remember now.

Mr. Williams: Stand up, Mr. Davis.

(Gentleman stands up in courtroom.)

Q. Do you recognize Mr. Davis who just stood up?

[fol. 1168] A. Yes, sir.

Q. Do you remember that he was with me the time that conversation took place and during the entire time that the conversation took place with you?

A. I remember him being there, but I don't remember that he was there when you were questioning me.

Q. Don't you remember that you were sitting in a big room there and I was sitting in one chair and Mr. Davis was sitting in another chair between us?

A. I was in pretty bad shape at the time you were talking to me. I don't remember whether Mr. Davis was there at that particular time or not.

Q. And at that time I talked with you about an hour?

A. You did.

Q. And the first thing you said or rather the first thing that I said was that I was the Deputy District Attorney in charge of this case and I wanted you to know that I was not in a position to make any promises or offers of any kind or character to you and that any statement you made to me would have to be freely made by you?

A. That is what you said.

Q. And isn't it a fact that the entire time that I talked to you, Mr. Davis sat between us in the front room at 3886 South La Salle Street?

A. I am not sure of that.

Q. And isn't it a fact that what I said believed that you [fol. 1169] had killed your wife, Mary James, and I believed that that killing on your part was caused by a sadistic impulse on your part? Isn't that what I told you?

Mr. Clark: Just a moment, I object to that upon the ground that it is utterly immaterial, if he did tell him that.

The Court: I think that question is proper; the objection is overruled.

A. You told me you thought I killed her all right.

By Mr. Williams:

Q. And didn't I tell you that there was nothing that I or any other officer could promise, that the only thing we could do was to have you answer the questions and if you wanted to answer the questions and if you didn't you need not, isn't that a fact?

A. No.

Q. And in addition to that, didn't I ask you, for a great deal of the time that I was talking to you, about another matter entirely than your wife's death?

A. I don't remember you talking about any other matter.

Q. Do you remember me mentioning the name of Lois Wright?

A. I don't think so.

Q. Do you remember me asking you a great many questions, without going into detail, a great many questions touching your relations with Lois Wright.

The Court: I think that has been asked and answered; the objection is sustained.

By Mr. Williams:

Q. Isn't it a fact that less than half of the time I was [fol. 1170] talking to you was in regard to the discussion about your wife, Mary?

A. All the time was in regard to my wife's death.

Q. Do you remember the first conversation I had with you was in your house on the 19th of April?

A. I remember the first word you said to me.

Q. What was it?

A. The first word you said to me when you entered the front room, Jack Southard told me I was under arrest and I said, "You brought enough men to get me." And the first thing you said to me was, "When we go after a killer, we take no chances." That was before you wrote the transcript out.

Q. Isn't it a fact that the first words I said to you were said to you after you had been taken from the room in which you were arrested into the dining room of your house and the words that I said were, "This girl is your niece?" And you said, "Yes"?

A. That is the last time; I said, "Yes."

Q. Now, at any time while you were in the company of Mr. Fitts, and while you were making the statements you made to Mr. Fitts, was any person there who beat you or threatened to beat you or offered you anything in the way of reward?

A. Just what time are you talking about?

Q. The time when you were in the presence of Mr. Fitts.

A. At the time I was there for identification?

[fol. 1171] Q. And at any time when you were in the presence of Mr. Fitts—

A. I won't say in the presence of Mr. Fitts.

Q. Yes. And the first time you talked with Mr. Fitts you told him you did not desire to make any statement, did you not?

A. That is right.

Q. And at that time he didn't question you about the death of your wife, Mary, at all did he?

A. Yes, he asked me about her.

Q. I am asking you if Mr. Fitts did?

A. He asked me about that, too.

Q. And the next time you talked with Mr. Fitts was on the 2nd of May, the day you were taken from the County jail, and were taken out to the premises at 1326 Verdugo Road, and then later taken to the District Attorney's office?

A. That is my best recollection.

Q. And those were the only two times that you talked to me, were they not, those two days?

A. As far as I can remember now, they are.

Q. Now, during the course of that day, upon the 2nd and 3rd of May, you ate some sandwiches, and drank some coffee in the District Attorney's office, did you not?

A. I drank some coffee.

Q. You were offered sandwiches, were you not?

A. I sent out and bought a couple, and somebody ate [fol. 1172] them before they got to me.

Q. Well, did you, yourself, eat any sandwiches?

A. They told me that the Deputy ate them.

Q. Well, did you, yourself, eat any sandwiches?

A. I don't remember eating them.

Q. Then after that Deputy Killion and Gray and you went out and had a dinner together, did you not?

A. Yes, sir.

Q. And while you were having the dinner, you had a conversation with Mr. Killion and Mr. Gray and Mr. Davis, in which you discussed the incident of the death of your wife, Mary?

Mr. Clark: Just a minute. That is objected to as incompetent, irrelevant and immaterial.

The Court: You may answer "yes" or "no".

A. I discussed to the best of my recollection what they had suggested that I should tell them.

By Mr. Williams:

Q. And after you came back—

The Court: Just a minute. That question might be misunderstood. Just what do you mean by that, Mr. James?

A. I mean that I promised them that if they would send me out to get something to eat, after hearing Hope's story, that I would think about it.

The Court: In other words, when you were out with Killion and Gray you went over the story?

A. Yes, sir.

[fol. 1173] By Mr. Williams:

Q. When you got back to the District Attorney's office, in the presence of Gray and Griffen, Southard and Mrs. Dorothy Adams of the District Attorney's office, you did make a complete statement to Mr. Fitts of your version of the death of your wife, Mary, that is a fact, isn't it?

A. I told him the best I could, what they told me.

Q. Now, did Mr. Killion, or Mr. Fitts, or Mr. Gray ever lay a hand on you?

A. No, sir.

Q. Or threaten you in any way?

A. No, sir.

Q. Or offer you anything?

A. No, sir.

Mr. Williams: That is all.

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[fol. 1174] By Mr. Clark:

Q. Mr. James, in response to one of Mr. Williams' questions, you stated that you had been convicted of three felonies, and in that connection I ask you if it is not true you have an appeal from such convictions now pending in Department—

Mr. Barnes: We submit that is not material.

Mr. Clark: I submit if he has an appeal that is undetermined, he is not convicted.

Mr. Barnes: I have authorities.

The Court: I am going to overrule the objection. It is merely a question of having the question asked. I don't think it makes much difference. You can answer the question.

A. I have an appeal.

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[fol. 1175] DR. GEORGE B. GILMORE, recalled as a witness in behalf of the People, having been previously sworn, testified as follows:

Direct examination.

By Mr. Williams:

Q. Dr. Gilmore, you have been practicing medicine in Colorado Springs for how many years?

A. 32 years.

Q. And have you had occasion to observe in your experience as to whether there is a difference in the effect of drinking alcoholic beverages by the person who drinks them, as to whether the liquor, if taken at a higher altitude, say of Pike's Peak, which is about 14,000 feet, or at a lower altitude?

Mr. Clark: Just one moment. May I have that question read?

[fol. 1176] (Question read by the reporter.)

The Court: You may answer, Doctor.

A. It is much more effective at the high altitude, that is, a similar amount taken at say an altitude of Colorado Springs, 6,000 feet, and the average air condition, than say on the top of Pike's Peak.

Mr. Williams: That is all.

Cross-examination.

By Mr. Clark:

Q. Doctor, I take it you are a college man, and an educated man?

A. Well, I have been since 1904.

Q. You have been out of college since 1904?

A. Yes, sir.

Q. You are not familiar with the early history of some of the early mining camps, I take it?

A. Well, I have heard of many such.

Q. Well, it is a fact, is it not, that during the mining excitement back in the '70's that men would go from the lower altitudes in Colorado up to Leadville and drink the

same quantity of liquor that they had been drinking at five or six thousand feet—— ;

Mr. Williams: We object to it is calling for hearsay as to what happened in 1870.

The Court: Let us have the question. Do not answer [fol. 1177] until I have a chance to rule on it, Doctor. Suppose you read the question as far as Mr. Clark got.

Mr. Clark: I think I will withdraw the question and concede that the objection is well taken.

Q. Doctor, the difference between the lower altitude, and the higher altitude is simply a difference in atmospheric pressure, isn't it?

A. You mean in regard to the alcohol?

Q. No, in regard to the altitude.

A. That is one menace.

Q. And that lighter air has certain physical effects, doesn't it?

A. It sometimes may.

Q. And that lighter air, that is most likely to be affecting the heart and the lungs, isn't it?

A. Yes, I think so.

Q. The lighter air may cause, by reducing the atmospheric pressure, cause the heart to beat more slowly, isn't that so?

A. I cannot answer that question, except in the question of exercising an opinion.

Q. Now, there is less oxygen in the cubic foot of the air at the higher elevation than there is at the lower elevation?

A. I believe that is correct.

Q. And it is the oxygen that the body requires to take in through the lungs?

[fol. 1178] A. Well, the lungs do take in oxygen.

Q. Of course, the air consists of oxygen, and hydrogen——

A. Of course, atmospheric conditions come in, as well as the lack of oxygen.

Q. The fact that a man is at a higher place, he discharges the same air as at a lower place?

A. They say that he does not.

Q. You say that the alcohol has a different effect, and is that effect purely a psychological effect, or physiological effect?

A. I think it would be a physiological effect.

Q. And in just what way does the physiological effect take place at a higher altitude?

A. Well, the individual that would be intoxicated, or under the influence of liquor, would be of a greater degree in a higher altitude.

Q. Do you express that opinion as the result of your personal observation, or reading, or both?

A. Both.

Q. Would you be kind enough to tell us what medical works you have read, in which that is stated to be a fact?

A. I don't think I could do that.

Q. Now, you cannot find—you cannot remember that you ever read it in any medical book that was ever published, can you?

A. Well, that is a conclusion that I arrived at by observation of patients.

Mr. Clark: That is all.

Mr. Williams: That is all, Doctor.

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[fol. 1184] ETHEL SMITH, recalled as a witness in behalf of the Defendant, having been heretofore duly sworn, testified as follows:

Direct examination.

By Mr. Parsons:

Q. Mrs. Smith, will you speak up so that all the folks in the jury can hear you? You have previously testified, have you not?

A. Yes, sir.

Q. And you know the defendant here, Mr. Robert James, do you?

A. Yes, sir.

Q. Do you recall the incident of Mr. James' arrest on or about the 19th of April of this year?

A. Yes, sir.

Q. And had you had occasion to see the defendant, James, shortly before his arrest on the 19th?

A. Yes, sir.

Q. And when was it that you had seen him?

A. On Friday before the Sunday.

Q. On Friday before the Sunday of his arrest?

A. Yes, sir.

Q. And did you have occasion to observe his facial appearance and his face?

A. Yes, sir.

Q. Mr. James, will you step over here by the witness [fol. 1185] just a moment, please? If I may have him come over here that she may examine him, your Honor?

The Court: Yes.

By Mr. Parsons:

Q. Now, will you examine the face and head and ears of Mr. James? Will you turn your head, Mr. James, please? Thank you. Now, will you take your seat again, please? May the record show that the defendant James approached the witness stand, that the witness took a look at his face and head?

Now, at the time that you saw Mr. James on Friday before the arrest, did you notice any difference between the appearance of his face and ears then and as they now appear?

A. No, sir.

Q. Now, shortly after Sunday, the 19th, the day of his arrest, did you see Mr. James?

A. I don't know just how many days it was.

Q. Well, was it a matter of a few or several days?

A. It was after the Grand Jury hearing.

Q. It was after the Grand Jury hearing?

A. Yes, sir.

Q. And where was it that you saw Mr. James upon that occasion?

A. In the county jail.

Q. In the county jail?

A. Yes, sir.

[fol. 1186] Q. And where in the county jail was it that you saw Mr. James?

A. First, through the screen, and then in the attorneys room.

Q. First, through the screen, and then in the attorneys room?

A. Yes, sir.

Q. And in the attorneys room, how close were you to Mr. James?

A. Probably two or maybe three feet.

Q. Probably two or maybe three feet?

A. Yes, sir.

Q. You were sitting on one side of the bench, and he on the other, is that right?

A. Yes, sir.

Q. Was there anything between you and his head or face?

A. Just a low board.

Q. Well, his head stuck up above the board, didn't it?

A. Yes, sir.

Q. And did you have a good view of his head and face?

A. Yes, sir.

Q. What was the condition of light then prevailing? Could you see clearly?

A. Yes, sir.

Q. And what, if anything, did you observe about the condition of his ears or face at that time?

[fols. 1187-1245] A. His left ear was very red and badly swollen.

Q. His left ear was very red and badly swollen?

A. Yes, sir.

Q. Did you notice anything unusual about the other ear?

A. It was real red.

Q. Now, without telling what the conversation was, did you have a conversation with Mr. James at that time with reference to the subject as to how he had come by this condition, which you observed?

A. Yes, sir.

Mr. Parsons: Cross examine.

Mr. Williams: No cross-examination.

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[fol. 1246] DR. PAUL E. BOWERS, called as a witness in behalf of the Defendant, being first duly sworn, testified as follows:

The Clerk: State your name, please.

A. Paul E. Bowers.

Direct examination.

By Mr. Clark:

Q. Dr. Bowers, you are a physician and surgeon, regularly licensed to practice your profession under the laws of the State of California, I believe?

A. Yes, sir.

Q. And you are now engaged in the practice of your profession here in Los Angeles?

A. Yes, sir.

Q. And you have been practicing medicine here in Los Angeles how long, Doctor?

A. Since 1922.

[fol. 1247] Q. And you are a graduate of what medical school, may I ask?

A. Indiana University, School of Medicine.

Q. And you graduated there when?

A. In 1907.

Q. And did you immediately enter upon the practice of your profession after graduating?

A. Yes, as an intern.

Q. And have you pursued any post-graduate work?

A. Yes, sir.

Q. What post-graduate work have you done?

A. Graduated in surgery at the Washington Post-Graduate Surgical School—

Q. And you—

The Court: Just a minute. The witness had not finished his answer.

Mr. Clark: I beg your pardon.

A. And I was on the staff of the Government Hospital for the Insane, at Washington, D. C., with William A. White. I received, as a junior medical officer there, I received instructions in the course of my daily work. I took the course of instructions three times at that school; did some post-graduate work in London, and in Vienna.

Q. The work that you did at the Washington school, under the direction of Dr. White, was rather a specialized work, was it not, Doctor, dealing with insanity and mental diseases?

[fol. 1248] A. Dealing with insanity and mental diseases, nervous diseases, and study of postmortems, and doing

postmortems, and laboratory work, in connection with the insane, and with those nervously diseased.

Q. And the Dr. William A. White, whom you mentioned as being at the head of that institution, is recognized by the medical profession as one of the great American psychiatrists, I believe?

A. Yes, that is true.

Q. Now, have you since your graduation specialized in any particular branch of medicine?

A. Yes, sir.

Q. What speciality have you pursued?

A. Mental and nervous diseases.

Q. And when did you begin specializing in that branch of medical science?

A. I began following my internship, a short while at the Logansport State Hospital for the Insane. Then I was sent to Marengo Hospital, at Cairo, Illinois, and to Indiana, Evansville. I stayed at these institutions somewhat over a year, and I don't know exactly how long. Then I went to the Government Hospital for the Insane, and stayed there during the years 1909, 1910 and 1911, and from then on I specialized in mental and nervous diseases.

Q. So that it would be an accurate statement if I would say that in addition to the work that you had in the various [fol. 1249] institutions that you have mentioned, that you have spent approximately 25 or 26 years practicing your speciality while you were maintaining your office, is that about correct?

A. That is approximately correct.

Q. You have been a member of the Lunacy Commission of this County at various times, have you not?

A. Yes, sir, I am a member now.

Q. And are now. And you have delivered lectures on nervous and mental diseases in various institutions of learning, I believe?

A. Yes, sir.

Q. Are you on the faculty of any of the universities at this time, Doctor?

A. I am on the faculty of Loyola University.

Q. Now, Doctor, you were appointed by the Honorable Thomas Ambrose, one of the Superior Judges in this County, to make an examination of this defendant, I believe, were you not?

A. Yes, sir.

Q. You have been employed to examine him in your capacity—under your appointment by Judge Ambrose?

A. Yes.

Q. And you have at no time had any consultations, or conferences with any counsel for the defendant?

A. No, sir.

[fol. 1250] And you don't know what we are going to ask you now?

A. Sir?

Q. You do not know what we are going to ask you now? It has not been the subject of any conference between us?

A. No.

Q. And you were not promised any compensation for any testimony that you may give here?

A. No, but I expect a little.

Q. But I mean you have not been promised any by any one connected with the defense?

A. No.

Q. Now, did you make an examination of this defendant upon one, or more than one occasion?

A. Yes, sir, I examined him on May 13th, May 23rd, and observed him in the courtroom, in Judge Vickers' courtroom, in the previous trial, and observed him for a little while in the jail playing cards with prisoners.

Q. Now, referring to the examination on May 13th, how much time did you spend in making that examination?

A. I would say approximately an hour.

Q. I wanted to defer for a moment, Doctor. Is there such a thing as a test for testing the mentality of individuals—

A. Well, there are approximately 30.

Q. What are some of the names?

A. The Simon-Binet Test, the straight test that is from France, the Elizabeth Town revision of that test, the Termin [fols. 1251-1252] revision of that test, the Alfa test, the Beta test, the Ebbing House test, the Ziehn tests—

Q. I think perhaps that will be sufficient for our purposes, Doctor.

A. Yes.

Q. Let me ask you: did you make use of any of these tests in your examination of this defendant?

A. Yes, I made use of parts of all of them.

Q. You say parts of all?

A. Yes, sir.

Q. You didn't pursue any one test, that is what you mean?

A. Yes, I pursued two tests thoroughly in addition to those that I have already mentioned.

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[fol. 1253] By Mr. Clark:

Q. Now, Doctor, laying aside any questions of insanity, which I understand is not involved here——

A. What?

Q. —did you form any opinion—I beg your pardon. I said, laying aside any question of insanity, for that is not involved here, did you form any opinion as the result of your examination of this defendant, as to his mental development?

Mr. Williams: Just a moment. If your Honor please, that question is objected to on the ground that it excludes the one factor for which such testimony, in our judgment, is admissible at this time. In other words, as I understand the matter before this Court, it is at the present time a matter of determining, among other things, whether this defendant had the mentality sufficient to make a confession, or make admissions, in other words, whether he could understand what was being said to him, and could understand, in turn, what he was saying, and that, to my way of thinking, must involve, so far as this witness is concerned, only the question of whether he was a person of sound or un-[fol. 1254] sound mind, whether he was inflicted with insanity, or not inflicted with insanity. And the fact, if it be a fact, that this witness may have opinions as to neurosis in this individual, or anything else, is not of moment in this case. The question is did this individual at the time he made a confession, or made admissions, if he did make such, did he have sufficient mental capacity to know what he was doing, and to understand the questions that were being asked him, and to understand the answers which he was giving, and unless that be the purpose for which it is being offered, it seems to me it is not admissible in this court.

The Court: I haven't any feeling of doubt but what the evidence is offered as part of the voir dire of the tendered extra-judicial declarations of the defendant. I don't think

the examination would necessarily be limited to the question of psychosis. There might be (I am making no comment as to whether there is, of course) a question of mental capacity, irrespective of psychosis. I am inclined to believe that the question last asked went to the latter classification.

Mr. Clark: Yes, your Honor.

Mr. Williams: It may be that I am in error. I thought it would be limited to the question of his mental capacity.

The Court: That is true, but mental capacity, mental horsepower, may be depreciated without there being a psychosis. The Court will take judicial notice of that, and [fols. 1255-1266] still it might be something which might not be ascertainable by a casual view, but might be determined by a person skilled in that line. Do you have the question in mind, Doctor?

A. I would like to have it again.

The Court: Please read it.

(Question read by the reporter.)

A. Yes, sir.

By Mr. Clark:

Q. What opinion did you form?

A. I formed an opinion that he was a dull, average individual. By that, I mean he had the mentality of the average dull adult individual, and was not within the borders of feeble-mindedness nor moranic.

* * * * *

[fol. 1267] Mr. Clark:

Q. Doctor, is there a form of mental disease known as dementia praecox?

A. Yes, sir, there is.

Q. And will you tell us whether that is a form of disease which comes on suddenly or whether it approaches gradual, over a considerable period of time.

A. In most instances it comes on quite gradually.

[fol. 1268] Q. And will you tell us some of the symptoms that are usually manifested in its approach?

A. Lack of interest in life in general, lack of interest in specific interests, education, occupation, clothing, deportment and the manifestation of the emotions which are common to the members of the human race, seclusiveness,

reclusiveness, withdrawal from society, withdrawal from the usual interests of life, day dreaming. Those are the important premonitory symptoms which precede the development of the acute mental disease.

Q. Doctor, I am going to ask you if you will just keep out of your mind any examination of any individual you have ever made, and basing your opinion upon the facts that are assumed in my question, answer the following question: I want you to assume the case of a boy, a member of a family of five children reared in extreme poverty in one of the southern states. Assume his father was a man of wandering or roving disposition, who would go away upon trips, sometimes starting away, going a mile or so and coming back and sometimes going away and staying two or three weeks, sometimes staying two or three years, and finally leaving his family altogether. I want you to assume also that this same father was a man of violent temper becoming extremely angry with his children and punishing them with great severity. As to the individual in question I want you to assume that he complained of severe headaches from his earliest childhood down to the period of middle life. When I say "the individual" I mean the son I am referring to, not the father.

[fol. 1270] I want you to assume that this son, for some reason, went to school for only a few months; that he began working in the cotton mills at about the age of 9 or 10 years; that during his boyhood he manifested a roving, wandering disposition, and after reaching manhood came and went with considerable irregularity. I would like for you to assume that in addition to the father, one of whose children expresses an opinion that the father was insane, that there was another distant relative who was insane, committed to an asylum, and that at least two other distant relatives, who were cousins, I believe, were feeble-minded. I want you to assume, in regard to this individual, the son of the father whom I described, that from his earliest childhood he seemed to have a defective memory; that he consorted largely by himself; that he didn't act as the other children acted, and to a considerable extent didn't enter into their games and amusements. I want you to assume that he was born at such a time as would make him about 45 years old at present. I want you to assume that the headaches of which I spoke continued

with greater or less frequency during his entire life; that during the year 1932, and in the fall of the year, his wife was found drowned in a bath tub; that during the January following his mother died, and he attended her funeral; that at a date of which I am not advised, but which I understand is not far from then, a nephew of his died, and I believe he accompanied the body to the home in Alabama. I want you to assume that during the year 1933 [fols. 1271-1272] this individual lived with a married sister; that he seemed restless and unable to sleep at night; that he was seen up walking around at late hours of the night; that he usually went to sleep in the morning, and did most of his sleeping during the morning hours; that he appeared nervous and irritable; that he had an apparent feeling or terror of the unlighted house, insisted that the lights be turned on at all times, and that on one occasion when he believed one of his nieces turned the lights off, he became violently angry with her, struck her; that thereafter he was reprimanded by his sister; that he burst out crying, and threatened to shoot himself; that during his entire life, from boyhood, he seemed egotistical, and undependable. Assuming those facts to be true, do you have any opinion, based upon them, as to whether he was or was not, during the year 1933, to which year the last few assumptions related, in entire possession of his faculties, in possession of sound mental faculties?

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[fol. 1273] Mr. Clark: I thought about that. Well, what I am trying to get at, Doctor, forming these hypothetical questions with some difficulty, upon those assumptions, have you any opinion as to whether that man was or was not—may I withdraw that? Upon those assumptions I will ask you whether you are of the opinion that the man is or is not mentally deficient?

A. I have an opinion, yes.

Q. What is that opinion?

A. That he is not mentally deficient.

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Cross-examination.

By Mr. Williams:

Q. Doctor, what examination of the defendant in this case did you make?

A. Well, I made a mental examination. First I made an historical examination, as given by the man himself. Following the historical examination, I made a physical examination, and following the physical examination—that is, the heart, lungs, kidneys, skin and bones, and facial muscles, and muscles of the body generally, genito-urinary organs, and the general stature of the man I examined, and [fol. 1274] he was a fine specimen, and following that I made a neurological examination, the cranial nerves, and the nerves that have to do with smiling, eating, smiling movements of facial muscles, and speech, and movements of the eye balls, and movements of the pupils of the eyes. Then the movement of the body muscles generally, to see whether the muscles were coordinated in their action, and whether the voluntary muscles of the body were under control of the will, and whether there were any evidences of any organic diseases of the brain or spinal cord, which would affect the condition of these 12 nerves that come from the brain, or the function of the nerves, that would lead to the condition and the overgrowth of the body muscles, and whether there was any impairment of speech which might indicate a defective brain. In other words, I examined the whole nervous system to see if it would function properly.

Following that I made an examination of the mental status of the individual, to determine the state of his consciousness, that is, to learn whether or not his consciousness was normal, clear or cloudy, or whether it was absent, whether it was delirious, or whether it was lethargic, or whether the nerve was in such a state that he did not understand the stimulæ coming from the outside world.

Then I made an examination as to whether the individual recognized speech, and made tests of him, and from responses made by him, in response to certain requests, as [fol. 1275] to whether his sensation was working properly, and made notes as to whether the sensations were properly grouped, so that there was a proper conception taking place in the individual's mind, whether he put one perception with another perception, to form ideas to enable him to understand what was said to him, and to enable him to understand the environment in which he was in.

Next I made an examination to acquire if he was acclimated to time, place and person, and he was conscious of me, knew the time of the day, the month and year,

and whether he was conscious of fact, and of the fact that he was in jail in Los Angeles, and in the United States, and that I was in the room with him.

And then I observed whether, in answer to my questions as to whether his speech was coherent, relevant and responsive to the point addressed to him, to find out whether or not he was building his thoughts normally, and placing them in such a way as to make them understandable.

I then inquired of the man to get his final opinion of what he thought of his own mental status, that is, to learn whether he had any insight, or understanding of his own mental status, as to whether it was an insane mental status that he had, or a sane one, or an abnormal one.

And then I asked him questions which would lead me to form an opinion as to whether he entertained a belief which was delusional, that his ideas were entirely wrong, [fol. 1276] which were not founded on fact, and which were retained, in spite of the fact that I might say that those ideas were incorrect. And I examined him as to whether he heard things, and saw things, or felt impressions that were contrary to fact.

And then I gave him simple problems, to learn further about all these things that I just previously talked about. I had him do simple problems in arithmetic, mathematical problems such as adding 8 and 8, and 9 and 9, and 4 and 4, and 10 and 10, and 5 and 5, and I gave him a concrete problem and asked him how many cocktails he could get for a quarter. I then gave him certain tests which involved the process of perception, and the grouping of ideas, and the comparing of ideas, and I asked him to tell me the difference in one's walk, and if he knew the difference between a fly and a butterfly, and to find out if he knew what caused a fly or a butterfly, and in so recognizing those two insects if he was thinking properly. I asked him to tell me the difference between the cow and the pig, the difference between the dwarf and a child. I gave him some psychological problems, a number of them. I asked him to form sentences with words. Then I asked him questions which involved the understanding of moral relationship of life. Then I inquired about his general fund of information, to learn if his memory was working, or not, whether he had a memory for remote events, the events that occurred in his past life, if he had memory for events that [fol. 1277] were occurring now, and recently occurred

events, or whether he had a memory of events that were occurring at the time of the examination.

And in regard to his schooling, whether it was conventional, or unconventional, in the experience of the school of life. And whether or not he had conducted a successful business, and had been able to earn money, and to sustain himself in the place in which he had lived, and whether he had adjusted himself to his life in the community, and had been self-supporting. I asked him for a single memory test. I gave him a number to remember, and asked him to remember that number, and after five minutes he recalled the number that I had asked him to remember.

I talked to him about the illnesses, and asked him about his complaints, and the diseases from which he had suffered, and whether he was suffering at the time of the examination. At that first examination he seemed to be in pain due to the effect of a spinal puncture previous to my visit. So I asked some questions on the mental examination, which took in all the mental operations of his mental life.

Q. Doctor, did you find as the result of your physical examination—what result did you find?

A. Well, I found that he was in a fair state of physical health. There was no abnormal indication of depression of the skull. There was nothing in the examination of the [fol. 1278] head which indicated any serious injury to the skull. The respiratory rate was 18, and there was no abnormal breathing sounds. I listened to his heart, and looked at the fingernails, and toenails, and ankles, and observed no difficulties such as might be found in tests of the heart or blood vessels.

Then I looked for paralysis, the loss of function of the facial muscles, the muscles of the face, and arm and leg, whether or not he could use them.

Q. What did you find in regard to that?

A. I found that there was no evidence of any paralysis of the muscles, the voluntary muscles of any portion of the body, and that his muscles were normal, under the control of the individual.

I looked for evidences of infection of the central nervous system, that is, the brain and spinal cord, for a disease called syphilis, to see whether there was any evidence of this disease having gotten into the brain, or spinal cord,

and whether or not, if it had gotten in, whether it disordered the function of the brain or spinal cord.

Q. And what did you find, as the result of that?

A. I found that there was no evidence of any invasion of the brain, or spinal cord, or the nerves coming therefrom, being infected with syphilis; that there was no evidence of that sort of thing.

[fol. 1279] Q. Now, Doctor, before we leave it, you referred to a spinal puncture. What do you mean by that?

A. Well, an individual who has a brain disease, sometimes tumors, sometimes syphilis of the spinal cord, sometimes syphilis of the brain, sometimes tumor of the brain and various diseases of the brain, we find that if we examine the spinal fluid we find evidences in that fluid of the disease that is present.

Q. Now, what you mean in referring to the pain——

A. Excuse me——

Q. —was that he told you that he had the puncture made for the purpose of testing the spinal fluid?

A. Yes, sir.

Mr. Clark: What was the question?

(Question read by the reporter.)

By Mr. Williams:

Q. Well, now, with reference to these examinations——

A. May I say that I made a special inquiry as to the presence of pain after the puncture, because this general rule holds good: When an individual has syphilis of the brain or spinal cord, and a spinal puncture is taken, there is usually a little pain, but when an individual has a spinal puncture made, and the brain and spinal cord are free from syphilis, then we usually find great pain. Now, that is not always true, but that is a general truism, and I find it in practically 70 per cent of all cases of spinal puncture from [fol. 1280] my personal experience, and I cannot speak for other doctors, but that has been my personal experience.

Q. Now, these examinations that you made of the various reflexes that you have described heretofore were made for the purpose of determining whether there was any evidence of any involvement of the brain, or of the central nervous system?

A. Yes, sir.

Q. And what was your opinion as to whether there was any involvement of the brain or the nervous system?

Mr. Clark: Just before that is answered—I am not going to object to that. I do not think it is cross-examination of the witness. But assuming that it is not proper cross-examination, it would be proper redirect, and I assume your Honor will not limit me when I take the witness again.

A. May I have the question?

(Question read by the reporter.)

A. The results of the examinations of the nervous system show that there was no involvement of the nervous system. That is, the brain and the spinal cord were not diseased.

By Mr. Williams:

Q. Now, the series of mental tests which you made were made for the purpose of determining whether the defendant was suffering from any mental diseases, as distinguished from nervous diseases?

A. It was made—yes, and also to find out whether he was suffering from any nervous conditions, and whether he [fol. 1281] was suffering from any state of mental involvement, any type of deviation from mental health, or whether there was any mental or nervous defectiveness.

Q. And what conclusions did you reach as a result of those examinations?

A. I reached a conclusion that he was not suffering from any condition of mental defectiveness, and that he was not suffering from any disease of nervous defectiveness, and that he was not suffering from any mental conditions due to the brain or spinal cord, or other portions of the body.

Q. Now, Doctor, when you asked him the questions which you did ask him, were his answers responsive to the questions which you asked?

A. Yes, they were. He didn't always answer the question directly, but the answer was responsive. Sometimes he answered "No", but he always answered responsively to the question.

Q. Did he appear to understand the questions which you asked him?

A. In my opinion he did.

Q. Was his language coherent?

A. His language was coherent, and relative to the point, and related to the question put to him.

Q. Now, what did you find as to his recollection of previous—

A. Well, I found two kinds of findings, first, a subjective [fol. 1282] finding, in which he said he was forgetful, and that his memory was pretty bad for the last two years, and that he had been inclined to be confused, and then, in direct opposition to that, opposite to that, rather, why he would find that he remembered that he served in the Marine Corps, and that he served at Quantico, Virginia, during the war, and that he had lived in Alabama, and had lived down South, and that he had married a number of times, and that he had some knowledge of some of his relatives, and he did remember the specific grammatical test which I gave to him, the common one.

Q. What was that?

A. I asked him to remember 365 Oxford Street, and then at the end of five minutes to recall the street number, which he did recall correctly.

Q. Did you form any opinion, Doctor, as to whether at the times when he claimed not to be remembering things, he was or was not malingering?

A. Well, I felt at times he was malingering about the answers to some of these questions, and at other times he may have been forgetful, and at other times he did not know, because of his limited memory, and certain things he could not remember because he had never learned them.

Q. Now, Doctor, on that subject of education, you differentiate the know of fact and intellectual capacity, do you not? That is to say, a person may be intelligent and [fol. 1283] not have much education?

A. Quite so.

Q. With reference to this particular individual, I think you have indicated that he told you that his education was very slight?

A. Yes.

Q. Did the examination which you made indicate that he had had small school learning?

A. Well, I felt that his education had been limited, so far as training is concerned, and on the other hand that he had acquired a good bit of education, that kind of educa-

tion that enables an individual to live in the community in which he happens to be, and which to my mind is the most important purpose of education, and I felt that he had that kind of education.

Q. What did you learn from him as to what his ability had been to adapt himself, and maintain himself in the community in which he had lived?

A. Well, I had learned that he had conducted a barber shop down in the center of this City, down on 8th Street near Grand, and that he had gotten along there quite well, and that he had made a living doing that, waiting upon the citizens of the City, taking care of them, and shaving them, and doing the things in the barber shop, and that he had done that and earned money. In other words, he proved to me that he had the achievement capacity. I asked him [fol. 1284] about Grant and Washington, or rather Washington and Grant, these individuals having been presidents of the United States.

Mr. Williams: If your Honor please, I observe that it is about 3:30, and I don't know whether there will be any more questions of Dr. Bowers, but may we have the recess at this time?

The Court: Yes, we will take the recess at this time.

Mr. Williams: I will see if there is anything more during the recess.

The Court: We will take the afternoon recess, and you will remember the admonition heretofore given.

(Recess.)

Mr. Williams: I had one or two more questions. Shall I proceed, your Honor?

The Court: Yes, you may proceed.

By Mr. Williams:

Q. Doctor, you spoke of a physical examination. Did you observe whether the defendant had or had not a hernia at the time you examined him on the 13th of May?

A. Yes, sir.

Q. And did you make an examination of that, of the portion of the body where the hernia shows?

Mr. Clark: Of course, that is not cross-examination. I assume counsel is making him his witness for that purpose?

The Court: Surely.

Mr. Williams: He was asked on direct examination as to [fol. 1285] whether he made a physical examination of him.

Mr. Clark: Did I ask him whether he made a physical examination?

The Court: You asked him whether he made an examination of the defendant. That leaves it wide open.

(Question read by the reporter.)

A. Yes. It was not a minute examination, but I noticed he did have an inguinal hernia on one side. I believe it was the right. I don't remember which side, but he had an inguinal hernia.

By Mr. Williams:

Q. Did you form an opinion from your examination of the hernia as to whether it was of recent or old origin?

A. From the casual observation and examination it would indicate to me it was an old hernia.

Q. Now, Doctor, would you be able to form an opinion as to whether that hernia was a hernia which occurred as the result of an accident, or violence, or any of the other things which cause hernia, as late as the 19th, 20th or 21st days of April, 1936?

A. I didn't have any idea about any date. I noticed it was a hernia, and in my opinion it was just an old hernia, no evidence of any recent occurrence.

Q. Would you call a period from the 19th of April to the 13th of May a matter of recent occurrence?

A. Yes, that would be a recent occurrence.

[fols. 1286-1296] Q. Did you form an opinion, as the result of your entire examination, as to whether the defendant was sane or insane on the 2nd and 3rd days of May, 1936?

A. Yes, sir.

Q. What is that opinion?

A. He was not insane.

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[fol. 1297] DOCTOR CHARLES DECKER, called as a witness in behalf of the People, being first duly sworn, testified as follows:

The Clerk: State your name, please.

The Witness: Charles Decker.

Direct examination.

By Mr. Williams:

Q. What is your occupation, sir?

A. Physician and surgeon.

Q. Are you licensed to practice as such in the State of California?

A. I am.

Q. And you do practice your profession in this state?

A. For 30 years.

Q. Did you, at my request a few days ago, make an [fol. 1298] examination of the stereos I guess you call them, stereos or any X-ray pictures which had been introduced into evidence in this case? I think they are exhibits 60 and 61?

A. I did.

Q. And did you also at that time make an examination of the report of the hospital at which Mary James was confined in the months of October and September, 1932, that is the doctor's notes and reports?

A. I thought the patient's name was Nona James.

Q. Winona, yes.

A. I did.

Q. By what method did you examine these X-ray pictures?

A. I examined them on a stereoscopic light stand for study of pictures by means of a stereo.

Q. Is that a stand which is specially designed for the purpose of studying X-ray pictures?

A. It is.

Q. Upon your examination were you able to determine the character and nature and extent of the bone injury which appeared in the skull of Winona James?

Mr. Clark: Just answer that directly, Doctor, please.

A. Yes.

Mr. Williams: Just describe what you determined as to the character of injury to the bone as determined from the X-ray pictures.

Mr. Clark: That is objected to upon the ground that it [fol. 1299] is irrelevant and incompetent.

The Court: Overruled. You may answer.

A. Exhibit 60 were pictures that were taken first a stereoscopic picture of the right side of the skull, that is the two views taken from different angles. It showed a fracture on the parietal bone on the right side of the skull. Perhaps I better point out the area in which the fracture occurred as it will be much plainer to understand.

Mr. Clark: All right, Doctor.

The Court: The ordinary shadow box wouldn't help, would it?

A. It might help, but I can point it out here on this skull.

The Court: For the purpose of the record, let the record show that Doctor Decker has produced a human skull for the purpose of illustrating the answer.

Mr. Clark: We are reserving our general objection to all this line of the evidence.

The Court: The record may so show.

Mr. Clark: And we are further objecting to the skull on the ground that it is unnecessary, that it tends to excite the passions and prejudice of the jurors and is of course, incompetent.

The Court: The objection will be overruled.

Mr. Williams: Doctor, using that skull, that you have there, will you point out at the same time as you state the positions of the fractures as you determined their position from your examination of the stereoscopes?

[fol. 1300] Mr. Clark: That is objected to upon the ground that it is incompetent, irrelevant and immaterial. It is really the same general objection that we have made to all evidence concerning the death of that wife and the transactions, events and occurrences in Colorado.

The Court: Objection overruled. You may answer.

A. The pictures marked Exhibit 60, show a fracture of the right parietal bone and near the lower margin and the squamous portion of the right temporal bone at its upper margin, with what we call comminution, that is a fracture in which there are many fragments. There were some open spaces along the line that joins these two bones together there, showing that the bone was broken and shoved out of the way or that the bone was so badly broken that parts of it were lost, irregular lines of frac-

ture extended upward from this center area on the right side up towards the top of the head.

Mr. Clark: We can't see the doctor's illustration at all.
The Court: Suppose you step over there, Mr. Clark?

A. From the center where most of the fracture appeared lines extended upward over this right parietal bone up towards the top of the skull and downward over the squamous portion of the temporal bone, down through the deep solid portion of the bone which we call the petrous portion of the temporal bone. The pictures that were taken about eight days later, if I recall, showed further fracture. The portion of the bone at the outer angle of [fol. 1301] the orbit is called the frontal portion of the malar bone. It is very dense. It is triangular and it will stand a great deal of force before breaking. This was broken and shoved forward. This was apparent in the right stereo pictures taken, I think it was, October 3rd.

Q. Those are the ones contained in People's Exhibit No. 61?

A. 61. 61 also contained a front view of the skull, stereoscopic, taken from the two angles, and that showed the fractures on the side with some depression, that is the bone was shoved in a little toward the center and this fracture on the orbit or on the bone at the outer angle of the orbit was very plainly indicated, showing considerable separation of bone at that point.

Q. And now, Doctor, in connection with your examination of these stereo pictures did you also make an examination of the reports of the doctors and nurses there at the hospital which were in the exhibits which were turned over to you? I think that was 58 or 59.

The Court: The hospital records were 58.

A. I read that report.

Mr. Clark: That is objected to on the ground it is immaterial that he made any such examination or not.

The Court: I didn't catch the full objection.

Mr. Clark: Immaterial.

The Court: Overruled.

[fol. 1302] A. I did examine the hospital records.

By Mr. Williams:

Q. And basing your opinion upon the examination of the stereoscopes and what you learned from the examination of the hospital records, did you form any opinion as to the type of force which caused the fractures which you found to exist in the skull?

Mr. Clark: Just one moment. While that question may be preliminary, as a matter of precaution for fear the witness may not answer categorically, I object to it upon the ground that it is immaterial. I will say to your Honor I think there will be no harm in overruling that objection if the witness is instructed to answer categorically, "yes" or "no".

The Court: You may answer that question "yes" or "no", Doctor.

A. Yes.

By Mr. Williams:

Q. What in your opinion was the type of force which caused the fractures which were found in the skull?

Mr. Clark: That is objected to upon the ground that it is hearsay and incompetent.

The Court: The objection will be overruled.

A. I formed my opinion as to the kind of force from the condition of the skull as shown by the X-ray pictures. The first picture shows fracture of the bones of the side of the head with some displacement of fragments. The pictures taken later from the front, showed that these fragments on the side were driven in a short distance and the picture [fol. 1303] of the fracture at the outer angle of the orbit showed that this bone was driven forward. In other words, the force was applied from one direction toward the side of the head, and force in another plane broke the bone here and drove it forward. In other words, there was more than one force applied.

Q. Now, did you form any opinion as to whether that force was the result of the body having been thrown against an object or whether something had come in contact with it in another angle?

Mr. Clark: That is objected to upon the grounds last stated and upon the additional ground that it is not a proper subject for expert opinion.

The Court: I think there is another objection that might be tenable, and that is that it doesn't appear from the examination of the X-rays whether the head had come in contact with an object or whether an object had come in contact with the head. I have some doubt as to whether that would be a medical opinion or a lay opinion. Does medical science solve that problem, Doctor?

A. It is very positive medical evidence.

By the Court:

Q. What I am trying to get at, Doctor Decker, is this: If you found a skull fracture—Well, let's take this particular case, would it be possible to tell whether they were caused by the head coming in contact with a stationary object and differentiate that from a moving object coming [fol. 1304] in contact with the skull, the skull being stationary?

A. There is a possibility of differentiating between the body being thrown violently and causing fracture of the skull and other manner of fracture. It is evidence in the picture and can be demonstrated.

Mr. Clark: I think it is not competent for the witness to pass upon his own qualification. I maintain it is not a question of expert testimony.

The Court: I was not trying to qualify the doctor. I was trying to find from the doctor whether there was medical science which would prove the matter.

Mr. Clark: It is a matter of physics, I think, purely and simply, not surgery at all.

A. Surgery is application of physics.

Mr. Clark: To a very great extent I recognize that as being the fact, Doctor, nevertheless I think this is a fact which any layman in knowing the laws of physics is just as competent to decide as a medical witness, and therefore, the medical witness cannot furnish the jury any particular enlightenment on the particular subject. That is what I tried to make apparent when I objected on the ground it was not a subject of expert opinion. It is an application of one of the universal laws which we are all just as competent to make as the witness is.

The Court: We recognize that a physician may testify as to whether a particular injury was produced, for ex-

[fol. 1305] ample, by a sharp instrument or by a blunt instrument. We know that some of those injuries which would appear to the layman to be an injury caused by a sharp instrument, experience and special knowledge would show to have been caused, not by a sharp instrument, but by an instrument with a square edge. I think you better reframe the question, Mr. Williams.

By Mr. Williams:

Q. Were there any evidences which enabled you as a surgeon and doctor to determine as to the fractures which you found on the skull which is under discussion, the manner in which those fractures were caused, as to whether the fractures were caused as a result of the body of the person being thrown against an object or by some object coming in contact with the skull in another manner?

Mr. Clark: That is objected to upon the ground that the evidence is incompetent, that the subject is not a subject of expert medical opinion, but a mere application of the laws of physics which jurors are as competent to apply as the witness and that no foundation has been laid for such evidence.

The Court: The objection will be overruled.

A. There was evidence that enabled me to make a determination regarding that.

By Mr. Williams:

Q. Now, state what the evidence was.

Mr. Clark: That is objected to upon all of the grounds stated last.

The Court: Same ruling, objection overruled. You may answer.

[fol. 1306] A. The fracture upon the side of the head of the two bones showed many small pieces. The fracture of the malar bone at the outer angle of the eye showed this piece driven forward. These were driven inward; this was driven forward, by reason of that I know that two forces were applied, one striking the side of the head and the other striking this bone and driving it forward to cause that forward displacement. If the fracture of the

head had occurred from the body being hurled against some hard object——

The Court: Pardon me, Doctor. I am inclined to think in view of the testimony given thus far, that the objection might be well taken. I think we have gone far enough.

Mr. Williams:

Q. Did you form an opinion as to the type——

Mr. Clark: Just one moment; before counsel states his next question I wish to move the Court to strike out the portion of the answer given upon all the grounds stated in the objection.

The Court: I am wholly uncertain as to what portion you asked to have stricken, Mr. Clark.

Mr. Clark: Then, if your Honor please, may I defer the motion until tomorrow morning when I have the transcript before me?

The Court: Certainly you may have that right. I thought I stopped the doctor before he had gone into the portion that was not admissible, but maybe I didn't. You may proceed.

By Mr. Williams:

Q. Did you form an opinion as to the type of instru-[fol. 1307] mentality which could have caused the fractures that you found to exist?

Mr. Clark: That question, your Honor, is objected to upon the ground that it is incompetent and immaterial. It is precisely the character of question that was asked in a condemnation suit about the uses to which a parcel of land could be put and as to which class of questions Judge Shaw in his opinion said that it was analogous to the famous question "If you had a brother, would he like cheese."

The Court: The objection will be overruled. I think it becomes within the rule that testimony may be received as to the nature of the instrumentality which might have caused an injury of the character displayed to the witness.

Mr. Williams: The question was, could you form an opinion from your examination?

A. I could.

Q. What, in your opinion was the type of instrumentality or instrument which could have caused the fractures which you found?

Mr. Clark: That is objected to upon the ground that the evidence is incompetent, the entire subject matter is irrelevant, that the inquiry is not a proper subject of expert testimony, that it calls for an opinion which the witness is not shown to be competent to express.
[fol. 1308] The Court: The objection is overruled.

A. A blunt instrument of moderate weight could have caused the type of injuries exhibited on the side of the head, and on the malar bone.

Mr. Williams: You may cross-examine.

Cross-examination.

By Mr. Clark:

Q. If you will pardon me, Doctor. The injury on the side of the head might have been caused by a blow of an iron object, with some degree of force, might it not?

A. It could.

Q. It might have been caused by a blow with a rock?

A. It could.

Q. It might have been caused by any kind of an instrument that was projected against that portion that was hurt, and heavy, and projected against that portion that was hit with sufficient force?

A. Not a heavy instrument, because the blows indicated a force from some moderately light hard instrument.

Q. What were the conditions upon which you based the conclusion that it was a light instrument?

A. The bone was broken in many pieces, indicating a rather violent fracture.

Q. Yes.

A. The brain substance, according to the hospital record, [fol. 1309] did not exude through the bone, and the brain substance would have protruded.

Q. Then in reaching the conclusion which you did reach, you took into consideration not only the skull, as I understand, but also the hospital records?

A. Yes.

Q. I am not clear whether any witness has testified to facts embodied in the report.

The Court: The hospital records were offered and received in evidence. There was no affirmative, independent testimony by the witnesses as to having themselves observed the matters contained in the hospital records.

Mr. Clark: I shall object at this time that this witness was not present, and I now move to strike the testimony of the witness out upon the ground that his opinion is based upon hearsay, being based upon statements made in the hospital record by some witness who was not produced, and who was not sworn, and whom we had no opportunity to cross-examine. I respectfully submit to your Honor that that opportunity to cross-examine is essential as to every fact that comes into the case, only in those instances where the Court receives some documental record required by law to be kept, being of a prima facie character. This information of the Doctor is based upon hearsay, and the information therefore, is incompetent.

Mr. Barnes: I think that counsel is at a slight disadvantage, your Honor. My recollection is that some one else handled that situation for the defense. Mrs. Snyder was here and testified—my recollection is that after a portion of the foundation was laid, there was an agreement between counsel, shown on Pages 902 to 910 of the record—

Mr. Clark: I will admit that that must have been true—

Mr. Barnes: I think that is the purpose.

Mr. Clark:—and I have been careful in making my objection to keep that assumption before me. Assuming that we waived our right to object to those records being received, we did not waive our right to object to any use being made as the foundation of a formed opinion. We were just as free to pass our objection to the information or the opinion of the doctor founded upon this as if they had not been received in evidence.

The Court: Dr. Decker, was there anything that you considered in forming your last opinion that you stated, other than the one factor that there was no exuding of the brain substance?

A. A condition of the skull shown in the X-rays, your Honor—

The Court: I mean—

A. —would form the foundation of such a judgment.

The Court: Could you submit that without the record?

A. The hospital record was only supplemental, and confirmed the judgment that any one would form from the X-ray. Though without the record, the judgment would [fol. 1311] be rated, but the other was simply additional evidence.

Mr. Clark: With that explanation I agree that the motion is not well taken.

The Court: All right; you may proceed.

By Mr. Clark:

Q. Now, Doctor, suppose an object of moderate weight, an ordinary object of moderate weight, were stationary and hit the side of the head with a certain degree of force, brought into contact with it, that would fracture a skull?

A. It might, yes.

Q. And if the force was great enough?

A. Yes, sir.

Q. And it might give rise to the same—is this what you would call a comminuted fracture?

A. No, the weight of the body would be considered, and if the weight of the body was other than against it, the weight of the body would carry the pressure into the head.

Q. You mean that the whole weight of the body would give an impact greater than you believe was received in this case, is that right?

A. The follow through weight would have pressed the bones way deep into the brain tissue, instead of just being slightly depressed.

Q. Would not that depend upon how the body was pressed against it?

[fols. 1312-1313] A. The weight of the body has an effect on the blow.

Q. But if the weight of the body struck some intervening object, that would make some difference?

A. It would.

Q. And whether such a thing did occur in this case, you have no means of knowing?

A. Yes, sir.

Q. It would have been a possible thing?

A. It would have been possible for a body to have struck some other object before it struck the other object.

Q. And that would give this condition of fracture?

A. No, I don't think so.

Q. What kind of a fracture do you think that would bring about?

A. A fracture with many particles, many broken pieces, that indicated a very sharp force; in other words, it was a sharp blow that broke the bone into small pieces.

Q. Suppose the blow was by contact with a hard instrument upon the head, being jerked on it by the neck, the remainder of the head being stationary, would you have a fracture then?

A. I seriously question whether you would have a fracture.

Q. You don't think the head could be brought against the rock with sufficient force to fracture the skull?

A. Not in the manner that that was fractured.

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[fol. 1314] DR. CHARLES DECKER, resumed the stand and testified as follows:

Cross-Examination.

By Mr. Clark:

Q. Doctor Decker, taking your skull for a moment, let me ask you if it is not true that there is a percentage of people who have what is sometimes termed paper skulls, that is skulls, the bone of which are exceedingly thin?

A. I never heard the term paper skull used. It is a fact that skulls vary in thickness.

Q. It is a fact that about two per cent of human beings have one or more of the occipital parts of the skull exceedingly thin?

A. I don't think that is quite correct. They do vary. Negroes have very dense skulls and Caucasians much thinner ones.

Q. Diverting from that for a moment you, in expressing the opinion which you have expressed, you assumed a blow struck on the skull with a certain amount of force, did you not?

[fol. 1315] A. I did.

Q. What amount of force did you assume that blow was struck with?

A. It could not be measured in pounds, but from the fragments of the skull, the number of cracks and the number of pieces of bone, I would say that it was a moderately light blunt instrument driven rapidly against the head to make the fractures on the side, and forward to drive the bone at the corner of the eye out of place, breaking it and driving it forward.

Q. Yes, Doctor, you have told us that three or four times before, but I am not asking you that; what I am trying to get at now is not the size of the instrument or the weight of the instrument, but the amount of physical force which you assumed was used in delivering the particular blow which you think was struck.

The Court: Do I understand, Mr. Clark, so that I may be able to rule if the question arise later on, that you are assuming that the blow was struck by some person using physical force?

Mr. Clark: That is the assumption that the doctor made. I am only following him.

The Court: I want to have this clear before we go further. Doctor, did you start out with the assumption that somebody had struck a blow, or did you take the evidence that you had at your disposal, analyze it, and arrive at a conclusion as to what had caused the injury?

[fol. 1316] A. I only reasoned from the damage to the skull that some moderately light, hard, blunt object had come in contact with it, travelling at a relatively high rate of speed, in order to make the fracture.

The Court: In other words, you started with your premises as the physical facts disclosed by the stereoscopic X-ray pictures?

A. I did.

Q. And drew your conclusions from them?

A. I did. I have had no evidence placed before me as to what caused the injury.

By the Court:

Q. You don't know, and you are not assuming any particular thing?

A. I am not assuming.

Mr. Clark: You are assuming however——

Mr. Williams: Mr. Clark, may I interrupt you long enough to say that one of the jurors is having difficulty seeing the skull, because you are standing between him and it.

Mr. Clark: That is the first time I ever knew that there was any juror that couldn't see through me.

Q. You did, assume, however, that some sort of instrument was used either by a striking blow or as a projectile, and brought into contact with the skull, isn't that right?

A. Yes, sir.

Q. And now, the result of such an impact so received [fol. 1317] would depend upon a number of factors, would it not, Doctor?

A. It would.

[fol. 1318] Q. One of the factors being the amount of force used in delivering the blow, or launching the projectile? That is correct, isn't it? That would be one of the factors?

A. Yes, broadly speaking, but to make it more exact, the velocity of the object, its weight and its shape.

Q. Now, in the first place, as to the velocity of the object, the X-rays afforded you no enlightenment, did they?

A. Yes.

Q. Well, with the enlightenment that they did afford, what velocity were you able to ascertain?

A. I would not measure it in foot seconds, but I would say a relatively high velocity.

Q. Well, if you can't measure it in foot seconds, isn't there any more definite opinion you can express than relatively a high velocity?

A. Well, a rock hurled from a human hand could have such a velocity, or a hammer in a human hand could strike, and the head of the hammer could travel with a velocity that would be called relatively high velocity.

Q. And a number of other things could be projected against the skull, or strike the skull, couldn't they?

A. Yes, if small and high velocity, they would produce that.

Q. But as to the amount of muscular energy back of such a blow, or the amount of velocity with which such an object would travel, the X-rays furnish you no information what-[fol. 1319] ever, do they?

A. They would not furnish exact information.

Q. Now, another of the factors that has to be taken into consideration is the strength of the skull itself, isn't that true?

A. Correct.

Q. Now, am I correct in my understanding, Doctor, that the bones of the skull of an individual vary in chemical composition as the individual progresses from childhood to old age?

A. Yes, there is a change in the deposits of mineral salts.

Q. And there is also a change, as the chemical change takes place, the manner in which the bone heals to blows changes, does it not?

A. That is correct.

Q. The bones contain lime and phosphorous, do they not, Doctor?

A. They contain mineral salts in the hard bone, and in the childhood that you speak of it is more cartilaginous substance, less of the mineral salts.

Q. And the mineral salts are lime and phosphorous?

A. Yes, sir.

Q. And the relation between the two changes as the individual becomes older?

A. Yes.

[fol. 1320] Q. Now, also the bones contain a certain amount of cartilage, cartilaginous matter, do they not?

A. Some contain a small part, and parts are very dense.

Q. And the quantity of cartilage is greater in young children, and becomes less as the individual becomes older, that is true, isn't it?

A. Yes.

Q. And those changes, both the changes in the ratio of the mineral salts, and the proportion of the cartilage, make a difference as to whether strength is necessary to fracture or shatter bone?

A. Some difference, of course. A more fragile bone will break while the other will bend.

Q. Now, those X-ray pictures that you examined showed no ratio of salts in the skull of the individual?

A. Oh, yes. The size of the skull indicates it is an adult skull.

Q. And what size of skull did the X-ray show?

A. The density of the bone showed.

Q. What was the density of the bone?

A. In measuring it—it would be of an adult.

Q. That differs in the same adult at different times of life.

A. Well, it would be variant.

Q. And that variance is different in different individuals?

A. Yes, they increase in the thin skull, and sometimes in [fol. 1321] thick ones.

Q. What made you determine how thick the skull was?

A. You could see the thickness of the bone.

Mr. Clark: By the way, I wonder if we could see those X-rays?

Mr. Barnes: I think the Clerk has them.

The Court: Did you bring them back?

A. At 6:00 o'clock of the day they were received I turned them over to Captain Plummer, the head of the department.

Mr. Clark: Does that mean that they were taken back to Colorado, and are not available here?

Mr. Williams: I am sending a man downstairs to find out.

Mr. Clark: I understand that everything has been sent back to Colorado. I will proceed with some other branch of the cross-examination until they do arrive.

Q. Doctor, tell me, the use of X-rays is common amongst medical men for the purpose of diagnosis, is it not?

A. It is, for many conditions.

Q. And the trained eye, examining an X-ray picture, may see many things that untrained eyes may not recognize, that is true?

A. That is quite correct.

Q. In order to properly interpret an X-ray, a considerable degree of skill is necessary, isn't it?

A. Quite true.

[fol. 1322] Q. And that skill comes only from experience, isn't that true?

A. Very true.

Q. No amount of study alone can give the skill necessary to analyze X-rays?

A. You are correct.

Q. And it is also true, is it not, Doctor, that for an accurate interpretation of X-rays, special equipment is desirable, and sometimes necessary?

A. Correct.

Q. You may use a stereoscope, is that the idea?

A. Both the stereoscope, and what is called the shadow box.

Q. And the use of the stereoscope, as distinguished from the shadow box, is that the stereoscope more nearly gives the impression of three dimensions, isn't that correct?

A. Correct.

Q. Looking at an X-ray through the stereoscope, you use the instrument for the purpose of getting as nearly as possible the view that you would have if you were looking at the original solid matter, instead of the flat sheet, is that correct?

A. Yes, sir.

The Court: Might I suggest that the manner in which the X-ray is taken, whether taken stereoscopically, or not?

Mr. Clark: Yes. And might I inquire if there has been [fol. 1323] testimony here—

The Court: It is described as a "Stereo" X-ray.

Mr. Williams: I am now handing to counsel People's Exhibits 60 and 61.

By Mr. Clark:

Q. Now, we spoke of the shadow box a moment ago, Doctor. That is simply a frame arranged so that the X-rays may be placed in the frame, and the light thrown upon them?

A. Usually with a frosted glass, to diffuse and soften the light.

Q. One can, however, take an X-ray, hold it to the light like this, and make some interpretation in some cases?

A. If there are large lines that can be plainly seen.

Q. And you recognize the two X-ray plates that I have here as two of the plates from which you based your opinion, do you not?

A. I cannot see very well.

[fol. 1324] Mr. Clark: I am referring, Mr. Reporter, to People's Exhibit No. 60.

A. Yes, these are two that I studied. These are the ones that are marked 60, I believe.

Q. Yes. And you recognize them as being two of the X-ray plates that you studied?

A. Yes, sir.

Q. Now, I hold in my hand here—I don't know how to differentiate—

A. They are taken at a slightly different angle.

Q. Yes. Well, I am holding one now in which the body of the letter "R" more completely covers the portion of the skull than the "R" on the other one. Having that before us, I am going to ask you what there is, if anything, upon that particular picture that enables you to determine the density of the bone that was fractured in the skull to which the testimony relates.

A. The depth of the shadow, the contrast between the places. Here is black, where there is no intervening bone.

Q. Now, wait a minute. By "here" you are referring to the margin?

A. The margin.

Q. At the extreme right of the plate and outside of the figure of the skull?

A. Yes.

Q. It is necessary, Doctor, to show that in the record, [fol. 1325] so that if an appeal is taken the higher court may understand what the word "here" means.

A. Outside of the skull the blackness is evidence that the X-ray had nothing in between it and the plate.

Q. Yes.

A. Where the skull shows it is the thickness of the bone cutting off the X-ray from the photographic plate on the other side that brings out the image. The density of the bone is what indicates how much X-ray was cut off or how much reached the film, so we can tell about density of bone by the amount of contrast between the unobstructed part of the ray on the plate and that that goes through the bone.

Q. Now, let me ask you, taking the plate you hold in your hand, I notice some dark colored patches upon it. Are they the shadows to which you refer?

A. They are places where there is very little bone in between the plate and the X-ray tube.

Q. Now, one of such places where there is very little bone between the plate and the X-ray tube is where I am indicating with my finger, near the lower rear part of the skull, is that correct?

A. Yes, sir.

Q. Now, this other plate which I have here is another plate showing the same bone, is it not?

A. At a different angle.

Q. And when we put the two plates here together it becomes immediately apparent that the shadows are heavier

[fol. 1326] in the plate I didn't show you at first than in the plate that I first attracted your attention to, isn't that true?

A. The shadow of the bone is heavier, yes, a different angle.

Q. Which, according to the statement as I understood it, you made a moment ago, would indicate different density, is that right?

A. The light goes through a heavy portion of the occipital bone here and in this one the occipital bone, the light is at such an angle that it goes through the thinner part and the dense part of the bone is here.

Q. So that a heavier shadow may occur in one plate than will occur in another plate where the same bone of the same density taken under the same conditions is involved, isn't that true?

A. No, not at all. You are entirely mistaken. The difference in the two pictures is that one is taken at an angle.

Q. I didn't ask you about these two pictures; I was asking you about X-rays generally.

A. No, the same angle and the same force of electrical current through the tube, the same distance from the tube to the object on the bone would show the same density of the same bone taken in two different pictures.

Q. Yes, but if the current was different or if the object [fol. 1327] photographed was a different distance from the place you would have a different depth of shadow, wouldn't you?

A. You would have a larger bone if it was any greater distance and the more it is enlarged the denser the picture would appear.

Q. And now, you of course, were not present when any of those pictures were taken.

A. No, I was not present.

Q. In forming the opinion that you expressed in answer to Mr. Williams' questions, did you assume any particular strength of current was used in taking these X-rays?

A. No, I didn't assume that, because it is a matter of X-ray technique to use—I didn't know what tube they took that with. It might have been a Coolidge tube; it might have been some other, but probably it was a Coolidge tube because almost everybody uses a Coolidge tube now. It is a highly perfected tube.

Q. In other words, you don't know what tube was used, what distance the object was from the plate, you don't know the strength of the current used?

A. It is not necessary to know those things.

Q. Well, you don't know those things anyway?

A. No.

Q. Doctor, I don't mean to be impertinent, but I assume you studied your profession in some institution of learning?

A. Yes, I did.

[fol. 1328] Q. And may I ask when you graduated?

A. Medical Department of the University of Southern California.

Q. May I ask when?

A. 1906.

Q. During your student days X-ray work was not much taught in the university, was it, Doctor?

A. We began very intensive study of X-ray back in St. Louis University where I began my medical education.

Q. Then, you did pursue the systematic study of X-ray work before you were admitted to practice your profession, is that correct?

A. To a degree. I didn't specialize in X-ray at that time.

Q. It was just a part of your medical course, that is all I meant to imply?

A. Yes, sir.

Q. And I suppose you graduated sometime between 1907 and 1910?

A. No, 1906.

Q. 1906. I beg your pardon. That was the period of your graduation rather than your entry of the school?

A. Correct.

Q. And you engaged in the general practice of your profession after that, did you, or did you specialize?

A. General practice.

[fol. 1329] Q. Have you been engaged in the general practice of your profession ever since?

A. I have followed surgical specialty for a good many years.

Q. For about how many years have you practiced surgery as a specialty?

A. I haven't limited my practice exclusively to surgery, but have specialized in it for a matter of 15 or 20 years, 20 years I would say.

Q. Now, during the 15 or 20 years, we will say 20 years in which you specialized in surgery—I want to be perfectly fair with you—as I understand, yours was a general practice in which surgery was a major item to which you devoted more attention than to most of the general practice, is that correct?

A. That is correct.

Q. And during the period that you have been engaged in specializing in surgery have you specialized in some particular branch of surgery or has that been the general surgery practice?

A. General surgery.

Q. In the practice of general surgery you didn't have a very large number of cases involving skull fracture, did you, Doctor?

A. I have seen a great many.

Q. If you will pardon me, but that you have seen a great many, doesn't quite answer the question. You haven't personally had a great many surgical skull fractures to which you devoted professional attention, have you Doctor? [fol. 1330] A. I have seen a great many that were under my professional responsibility.

Q. Now, would we be safe in saying 40 or 50?

A. No, many more.

Q. Do you think as many as a couple of hundred?

A. Yes.

Q. Do you think that would be about a fair estimate?

A. Well, without going back for records in the army, where I had the hospital back of the Argonne, I couldn't tell you. We saw hundreds of cases of all kinds of fracture.

Q. Just tell me, Doctor, as nearly as you can, in how many of those fractures you had X-ray pictures taken at all.

A. All of them, I would say, all of them, because in a skull fracture we invariably resort to X-ray to determine the extent of bone damaged.

Q. In how many of those cases have you called in someone else to do the interpretation?

A. I have done my own interpretation.

Q. You have done your own interpretation all the time?

A. Yes, I was X-ray specialist for the Childrens Hospital some years ago.

Q. Coming back to your skull—

Mr. Williams: I take it, that when you refer to "his skull" you refer—

Mr. Clark: I refer to the one that he carries in his hands.

[fol. 1331] Q. Coming back to the skull, I understand that you found some fracture of the bone upon which I have now placed my finger?

A. Yes, sir.

Q. What bone do you call that, Doctor?

A. Malar.

Q. That is the upper jaw bone, isn't it, or part of it?

A. It forms the outer angle of the orbit.

Q. Of the orbit of the eye. And that is a comparatively thick bone, is it not?

A. Comparatively thin compared with other bones of the skeleton.

Q. Now, Doctor, before I go on to that, we have here a human skull, and I understand that in the live human being this is simply a bony case in which softer, more delicate organs are enclosed? Is that right?

A. Quite so.

Q. The principle of those organs being the brain?

A. Yes, sir.

Q. And one of the reasons for the dome shape skull is that a skull of such shape will withstand a heavier blow than if it were of other shape.

A. Quite so.

[fol. 1332] Q. In addition to that, as I understand, the portion of the skull where the brain is contains a fluid extending down into the spinal cord, that we sometimes speak of as the spinal fluid, is that right?

A. There is.

Q. The brain is suspended in that fluid?

A. There is a slight amount of fluid over the brain, under the meninges that line the skull.

Q. One of the functions performed by that fluid is to absorb the shock of blows or impact upon the skull before they reach the brain, that is true, isn't it?

A. It would be so thin on the side of the head that it wouldn't have much of a cushioning effect.

Q. At any rate, did it ever come to your attention as a medical man that an impact might be received upon one side of the head, and no fracture result there, but the bone upon the other side of the skull be fractured?

A. That is a well recognized principle.

Q. You call that reflex fracture?

A. Yes, sir, or contre-coup.

Q. And it isn't always even possible then, is it, Doctor, from the mere fact of a fractured bone, to tell where the impact was? You have to have other facts than that, sometimes, in order to know where the blow was struck?

A. The appearance of the bone would have to be taken into consideration to determine that, of course.

[fol. 1333] Q. Now, the bone of which we were speaking that forms part of the orbit, you call that the malar bone?

A. Yes, sir.

Q. That is quite flat and thin in places, isn't it?

A. Quite.

Q. It is a bone that is easily broken?

A. In some parts easily broken; in other parts, rather dense, and rather strong, because of its anatomical arrangement.

Q. Much more easily broken over the greater part of the surface than the bones of the skull proper, that is, the occipital, parietal and temporal bones, isn't that true?

A. Portions of the occipital bone are rather thick, and hard to break. Other portions are rather light. The same holds true of most all the bones of the skull.

Q. As a matter of fact, the densest part of the skull is the occipital bone, isn't it?

A. Around the opening for the spinal cord.

Q. By "the occipital bone", you mean the back of the head?

A. It forms the back and base of the skull.

Q. On the other hand, the temporal bones are sometimes quite thin, are they not?

A. The upper part of the temporal bone is usually thin.

Q. So that in considering the effect of a blow, we have to consider which one of the bones is involved, that is, when we know which bone is involved, we at once begin to get [fol. 1334] some idea on whether it is one of the heavier or lighter bones of the skull?

A. Yes.

Q. Now, referring again to the Exhibit 60, and again referring to the place which I showed you first, am I correct in my understanding that the darker portions which seem to lie above the mouth of the individual's skull are shadows?

A. The dark shadow here—

Q. That is what I refer to.

A. —is a cavity in the bone, called an antrum, and the shadow here——

Q. Referring to a lighter shadow pretty near the back of the eye?

A. Yes. That shows the thinness of bone, or the lack of bony structure there to obstruct the light going through here where the eyeball is.

Q. I am showing you now the second of those plates, rather than the first one.

A. Yes.

Q. Does that plate show where the fracture of this malar bone occurred?

A. The fracture of the malar bone doesn't show clearly in this picture.

Q. Does it show more clearly in the component picture?

A. No, it is in 61.

Q. Does it show more clearly in one of the plates of 61? [fol. 1335] A. Yes.

Q. This is Exhibit 61, which seems to consist of——

A. Three sets of pictures.

Q. —four——

A. There are six positives in there.

The Court: Dr. Decker, when a stereoscopic X-ray is taken, are there one or two films, or negatives made?

A. There are two films that are exposed in a stereoscopic picture, that is, they might have one large film, and have half of it covered, and expose one half, and then shift the plate holder and expose the other half.

The Court: The technique requires two negatives for that?

A. It is two negatives on one plate, or two separate negatives.

Mr. Clark: I think possibly the skull will illustrate better than the X-ray what I am trying to get at. Will you just place your finger on the portion of the malar bone which you found to be fractured?

A. There is a fracture just at this point.

Q. That is just below the suture?

A. Just below the inferior angle of the frontal, and this is the upper part, what we call the frontal portion of the malar.

Q. To what extent was that bone fractured?

A. It is broken across here, and driven forward, away from the suture line.

[fol. 1336] Q. Now, that would indicate that the skull came in contact with some matter giving impact from the rear, would it not?

A. It would. It might, from some object coming in contact with the skull from the rear. The converse is equally true.

Q. The frontal bone, itself, was that at all injured?

A. There doesn't appear to be fracture lines on the frontal bone; it is the parietal bone, the temporal bone, and this portion of the malar bone, which show the fractures in the X-rays which we have.

Q. Yes. Now, the parietal bone lies, if I may use the expression, somewhat above the temporal bone?

A. It is the bone that lies on the side.

Q. And you found the parietal and the temporal on the right side of the individual injured, is that correct?

A. Correct.

Q. Now, where would you say the greater area of fracture was? Would you say it was in the parietal or the temporal?

A. More in the parietal, and this portion of the temporal, this little flat portion here, and they show many pieces or fragments of bone. Right about at this suture line there are openings brought about by the impact of the object that contacted.

Q. Now, yesterday you spoke about the weight of the body in the case of the skull falling upon some heavy instrument. As a matter of fact, the weight of the body alone [fol. 1337] would not determine the force with which an impact in such case would be received, would it?

A. No. The density, and the weight, and the volume of the object, the speed with which it was traveling, would measure the kind and degree of damage that would be sustained.

Q. For example, if a person standing up were to fall in an epileptic faint, or a fit, the body would not strike a hard object underneath with as nearly great force as if a body were thrown off a cliff 50 or 60 feet?

A. That is very apparent.

Q. The law of falling objects would determine the velocity of the human body the same as any other falling object?

A. I think gravity affects them both.

Q. It would be a possible thing, would it not, for both fractures to have been brought about by the same instrument, however it may have come in contact with the skull?

A. Yes.

Q. And it would have been a possible thing for the two fractures to have been caused by different instrumentalities, would it?

A. Correct.

Q. And it would have been possible, would it not, for the malar bone to have been fractured by the skull being brought back against some hard object?

A. It could be fractured that way.

Q. Now, I think I have covered about all of the ground [fol. 1338] that I had intended to, Doctor, except possibly one or two questions. If your Honor please—is there going to be any redirect?

Mr. Williams: One or two questions.

Mr. Clark: If your Honor please, I don't want to delay the Doctor necessarily, but I might ask him to remain until after the Court adjourns, until after the recess. I have concluded my examination as far as I know now, but during the morning recess I may have three or four more questions to ask.

The Court: I think he might do that.

Mr. Williams: I have one or two questions, your Honor.

Redirect examination.

By Mr. Williams:

Q. Doctor, in your opinion, could the factors which you found in your examination of these X-rays be caused by a single blow?

Mr. Clark: Just one moment. I don't think that is redirect examination, but I think it is otherwise a proper question. I am not going to object on that ground. I was trying to think out loud, as to whether there was any ground that I was going to object upon besides the one.

The Court: You may answer.

A. Will you repeat the question, Mr. Person?

(Question read by the reporter.)

[fol. 1339] A. No.

By Mr. Williams:

Q. And what is your reason for that opinion?

Mr. Clark: That is—well, I won't object to that. Go ahead.

A. They show fractures that could only occur by different blows:

Mr. Clark: The witness has testified to that before.

The Court: That is my impression.

A. There is other evidence in the multiple fragments upon the side of the head.

By Mr. Williams:

Q. Now, you spoke of some kind of a fracture that Mr. Clark called a reflex fracture, and you had some other name?

The Court: Contre-coup.

Mr. Williams: What?

A. Contre-coup.

Q. Have you any opinion that any of these fractures could have been caused by such a blow as his Honor has just expressed, the word I cannot understand?

Mr. Clark: Mr. Williams, I don't make any contention that such words reflect on the opinion of the Doctor at all.

The Court: I think the question might be answered, because while the matter might be clear to counsel, it may not be to the jury.

A. The fractures that are shown in the X-rays are very [fol. 1340] evidently the result of particular violence to the side of the head on which they occurred.

By Mr. Williams:

Q. Doctor, you stated something of the experience you had had on the matter of bone structure, and X-ray studies. Will you state more fully what your experience in those lines has been?

A. Well, when I began my practice I was the X-ray specialist, doing all the X-ray work at a foreign hospital. When I was an intern in the hospital, I did all the work,

the X-ray work, at the hospital. At that time they didn't really do the X-ray work in the hospital. After that I was engaged in industrial surgery, and I produced one of the largest type of X-ray machine for my work there. And in my work there I produced the best that could be done. We had one hospital where I handled six wards of fracture cases.

Q. And during that period you examined a great many fractures of the skull, both by physical examination of the patient, and by examination of X-ray pictures that were taken?

A. I did.

Q. Did you diagnose the injuries, and determine the method, the best method, to operate on patients?

A. I did.

Mr. Williams: That is all.

The Court: Doctor, what was your position in the service [fol. 1341-1431] during the World War?

A. Well, I commanded a few hospitals, and then I was in charge of the Medical Corps.

The Court: The Medical Corps?

A. Yes, and I had charge of ten different hospitals in the Argonne, and of the brain cases I would say that I handled 87 per cent of them.

The Court: Any further questions?

Mr. Williams: Nothing further.

Mr. Clark: May we take our recess at this time?

The Court: Yes, we will take our recess at this time. The audience will remain seated until the jury have retired.

(Recess.)

Mr. Clark: I would like to put Dr. Decker on the stand for just a single matter.

The Court: You may do so.

Recross-examination.

By Mr. Clark:

Q. Dr. Decker, if any of these X-ray plates are altered in any material respect, you could ascertain that upon inspection, could you not?

A. Yes, sir.

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[fol. 1432] CHARLES GRIFFEN, recalled as a witness in behalf of the People, having been heretofore duly sworn, testified as follow-:

Direct examination.

By Mr. Williams:

Q. Your name is Charles Griffen?

A. That is right.

Q. You are the assistant chief of the Bureau of Investigation of the District Attorney's office of this county?

A. I am.

Q. Mr. Griffen, you were present at the time the defendant in this case was arrested on the 19th of April, 1936, were you not?

A. I was.

[fol. 1433] Q. And accompanied him to the District Attorney's office?

A. I did.

Q. Thereafter did you, in connection with others take him out to the premises located at 3882 South La Salle Avenue?

A. I didn't take him out at that time, but I arrived out there about 9 o'clock that night.

Q. And he was there when you arrived?

A. He was.

Q. When you arrived did you immediately start questioning him?

A. On Sunday night I did not.

Q. When did you start questioning him?

A. At about 4 o'clock in the morning.

Q. Monday morning?

A. That is correct.

Q. And who was with you at the time you started questioning him?

A. Jack Southard was there when we started questioning him and so was Everett Davis.

Q. During the questioning was there a time at which the defendant was struck by Captain Southard?

A. There was an occasion when he was slapped by him.

Q. Just state the circumstances of that occasion.

A. He had been asked questions and had been giving answers very freely all morning and Jack Southard said,

"Yeur wife, Mary was a very sweet girl, a very nice woman. She was very well thought of by her friends, [fols. 1434-1435] seems to have come from a good family and it is a shame she had to die the way she did in this pool out there." Mr. James—

Mr. Clark: Just one moment. I object to anything that Mr. James said at that time upon the ground that Mr. James was so circumstanced, was acting under such force, duress and coercion that anything he said was not his voluntary expression and could not be.

The Court: Objection overruled. The matter was first brought into the record by the defense, and further, I think it is admissible on another ground. Proceed.

A. Mr. James said, "She was not very much." He said, "She was a whore when I married her." At that time Jack was sitting in a chair just opposite his chair and he reached over and slapped him and I said, "Take it easy, Jack".

Mr. Williams: Was there any force or violence of any character used upon or against the defendant during the time that you were in his company?

A. There was not.

Q. Either before or after that?

A. There was not.

Q. Now, following the slap in the face did you and Jack Southard continue to question the defendant?

A. We did.

Q. And did he thereafter state in substance or effect that he had killed his wife?

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[fol. 1436] Mr. Williams: Now, Mr. Griffen, did you from time to time thereafter and prior to the time that the defendant was placed in the county jail, question him again?

A. I did question him and was present when he was questioned the next evening at the house next door to his home on La Salle Street until about 1 o'clock in the morning.

Q. Were you in his company when he was taken down to be booked?

A. I was at the office when one of the officers took him up to be booked. I was not present at the time he was booked.

Q. Will you just describe as best you can the defendant's manner during the entire time that he was under your observation from the time that he was arrested until he was booked?

A. He was very cool and calm and collected at all times. He answered questions readily; if he would answer a question he would answer it at great length. As a matter of fact the length of time spent in questioning him was very small compared to the time that he gave answers. He answered all questions freely. I talked to him Tuesday morning at the office. He was very calm and collected and as a matter of fact, he was in much better shape physically [fol. 1437] and mentally than any officer who worked on the case.

Mr. Clark: I move to strike out "He was in much better shape physically and mentally than any officer that worked on the case" as being an opinion or conclusion of the witness and incompetent.

The Court: Yes, the answer will be stricken out. I think it should be confined to appearance.

Mr. Williams: Now, did he at any time while you were in his company appear to be afraid?

A. He did not.

Q. Was his conversation rational?

A. Very rational.

Q. And were his answers to the point and coherent?

A. They were, and he gave us answers to things that we had no knowledge of at the time, that proved correct afterwards.

Q. During the time that you were questioning him was there any question addressed to him on the subject of a woman at Hermosa Beach?

A. There was.

Q. Now, just state what those questions were and what his answers were.

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[fol. 1438] Mr. Williams: I think the question was, was there some conversation between the defendant and you and

Jack Southard on the subject of a woman and the defendant at Hermosa Beach?

A. There was.

Q. What was that conversation?

.

A. Mr. James was asked if a short time after his wife's death and before the Coroner's inquest was held, he had [fol. 1439] spent the night with a woman at Redondo Beach?

Mr. Clark: Now, if your Honor, please, so that the record may be straight, may it appear that I object to this line of evidence on the ground that if it appears that the defendant answered affirmatively, it would be an irrelevant matter tending to degrade the defendant in the eyes of the jury, and of such character as would be calculated to create a prejudice against him.

The Court: Objection overruled. You may answer.

Mr. Williams: You may proceed with the answer.

A. He denied that he had been down there. He was asked if he had ever spent the night at a hotel in Redondo Beach.

Mr. Clark: I make the same objection to any reply that the witness made to such question.

The Court: Overruled. You said "Redondo". Do you mean Redondo?

A. Redondo is my recollection, Redondo or Hermosa; I am not positive about that. But I believe it was Hermosa at that. He said that he had never been down there at any time during that period. After that Mr. Southard read a letter to him that he had in his possession.

Mr. Clark: May I ask, if your Honor please, when he says, "Had in his possession" whether he means the defendant had it in his possession.

A. Mr. Southard had in his possession. After reading it Mr. James said, "So she did write into the District [fols. 1440-1441] Attorney's office about it, did she." He said, "That woman tried to blackmail me". I said, "What do you mean by that?"

Mr. Clark: It is understood of course—

The Court: The objection will ride.

Mr. Clark: That I have the objection to all of this line of testimony.

The Court: Yes.

A. He said, "I went down there to the beach with that woman, but she tried to collect money from me afterwards to keep quiet on it. I said, "Where did you meet this woman? He said, "Well," when he first met her she was living up at Ninth and Alvarado. I think he said he first met her at the Italian Village. It was a very lengthy conversation. I can't attempt to relate all of it but as near as I remember now he told us where she lived and that he had met her at her home several times. We asked him what address, and he said he couldn't remember, but he could take us up there and show us where the house was. We asked him what her name was and he told us that her name was Madge Reed.

By Mr. Williams:

Q. Prior to that statement by him did you know what this woman's name was?

A. I didn't know the woman's name, nor where she lived.

Q. And thereafter did the defendant take you to a place which he pointed out as her former residence?

* * * * *

[fol. 1442] A. Mr. James did direct us to, or rather pointed out a house that this woman lived in and he said he visited there at that address.

Mr. Williams: You may cross-examine.

[fol. 1443] Cross-examination.

By Mr. Clark:

Q. Mr. Griffen, as I understand, you were one of the officers who first took the defendant into custody, is that correct?

A. I was.

Q. That was upon a Sunday morning, was it not?

A. That is correct.

Q. And you would say about 9:00 o'clock in the morning?

A. It was approximately that time, in that neighborhood.

Q. And then, having taken him into custody, did you upon that morning take him before a Magistrate?

Mr. Williams: Objected to as immaterial.

The Court: Sustained. Well, I will allow the question to be answered. You may answer.

A. I may answer?

By Mr. Clark:

Q. Yes.

A. Not on Sunday morning.

Q. Where did you take him?

A. He was taken to the adjoining house for a short time, and then taken to the office of the District Attorney.

Q. And about how long did he remain in the office of the District Attorney?

A. He remained there until—as far as I know, until 5:00 or 5:30.

Q. That is in the afternoon?

[fol. 1444] A. That is correct.

Q. Did you remain with him during all of that time?

A. Not all of that time, no.

Q. You were with him a considerable portion of it?

A. No, I probably spent one hour in his presence during that time.

Q. And then when he was taken back to the adjoining house, as I understand, you did not accompany him?

A. No, I didn't take him back, no.

Q. You did go back to that adjoining house while he was there?

A. I went back about 9:00 o'clock at night.

Q. You made that visit about 9:00 o'clock that night, in the course of your investigation of this murder charge, did you not?

A. I went back there in the course of this investigation, yes, sir.

Q. And the house you speak of is about a five-room house, is it?

A. It was.

Q. And the time you went back there, how was it furnished?

A. It was a six-room home, I should say.

Q. How was it furnished at the time you went back there?

A. In the living room there was a piano, there were two overstuffed chairs—

Q. Well, Mr. Griffen, I don't want to go into too much [fol. 1445] detail, but can you say it was fully furnished?

A. Yes, it was a furnished home.

Q. And when you reached there that evening, whom did you find there?

A. Jack Southard was there, and John Martin was there, and Everett Davis, and I believe Scott Littleton. I believe that was all, unless Harry Dean was there.

Q. Martin, Davis, and Littleton at that time were all investigators for the District Attorney, were they not?

A. That is correct.

Q. And were working with you on this charge of murder, were they not?

A. Well, we were probably interested at that time in two—

Q. I didn't ask you that. They were working with you upon that charge?

A. On the murder, limiting it to the murder—it was both cases.

Q. Answer my question.

A. I answered just what you asked me.

The Court: Just a moment; gentlemen; you are both talking together. Proceed.

By Mr. Clark:

Q. Of course, if they were working with you on that—

A. They were working with me on the incest and the murder charge.

[fol. 1446] Mr. Clark: Now, I move that that be stricken.

The Court: That may stand.

By Mr. Clark:

Q. You have been trying to answer questions the way you wanted to, and interpret them, and make your own answers, haven't you?

Mr. Barnes: That is objected to as incompetent, irrelevant and immaterial.

The Court: Objection sustained.

By Mr. Clark:

Q. You have been sitting there on the witness stand trying to think how you could say something that would prejudice this defendant in the eyes of the jury, have you not?

A. My answer to your question is that I have answered the questions you asked.

Q. Well, answer the questions directly.

A. I cannot answer without trying to explain why, and you have tried to tie me down to a question of whether we were only investigating the murder, and you know that isn't true, Mr. Clark, that I would attempt to give an unfair answer.

Mr. Clark: I am not going to take the trouble, your Honor, to reply to the personal insinuation.

The Court: Proceed with the examination of the witness.

Mr. Clark: I am asking him concerning his examination of the case, and not the desire that is in his mind as he testifies, and I am waiting for the answer to that question. [fol. 1447] Will you read the question, Mr. Reporter?

(Question read by the reporter.)

A. If the truth would hurt him, I probably have.

Q. And all that you have had in your mind was to tell the truth, is that the truth, Mr. Griffen?

A. That is it.

Q. And to the questions that were asked you, concerning the particular matters about which you were interrogated, you have told the truth?

A. That is the only thing I have answered.

Q. I disagree with the witness on that. Mr. Griffen, how much do you weigh?

A. 220 pounds.

Q. Did you weigh that at the time that your testimony refers to?

A. No.

Q. What was your weight at that time?

A. 245 pounds.

Q. How old are you?

A. I am 40 years of age.

Q. And when you got back there at 9:00 o'clock on the evening of which you speak, in what part of the house did you find the defendant?

A. He was sitting in the front room.

Q. By himself?

A. No, the other officers were present there.

[fol. 1448] Q. Was he handcuffed?

A. I never have seen Mr. James handcuffed.

Q. And you didn't see Mr. James handcuffed on that occasion?

A. May I finish the answer? Except after he was booked in the Sheriff's office.

Q. Was he fastened in any way?

A. No, he was not.

Q. Was there any one else in the room with him?

A. The night I arrived?

Q. Yes.

A. I have already said "yes", and I repeat it.

Q. Were all three of these investigators in the room?

A. I wouldn't say that. I am not positive as to who was in the room when I first arrived.

Q. Well, what were the other people who were in the room doing at the time of your arrival?

A. They were carrying on a conversation.

Q. Were they sitting or standing, those that were present?

A. Those that were present were sitting. I was the only one standing.

Q. How were they seated with relation to Mr. James?

A. I can recall where Mr. James was seated, but I do not know that I can recall where any other individual was seated at that time.

Q. And you did not, at that time, participate in the [fol. 1449] conversation, as I understand you?

A. Yes, sir, I participated some in the conversation.

Q. You did, however, remain in the house?

A. Yes, sir, I did remain in the house.

Q. Did you remain in the same part of the house that the defendant was in?

A. It was in the same house. I passed through the room once or twice going to the bathroom, and the bedroom.

Q. Whenever you went through that room you saw some other investigators in it?

A. I did.

Q. And they were talking to the defendant, were they?

A. Yes, sir.

Q. And whenever you noticed the conversation, they were talking about the death of the defendant's wife, were they not?

A. I cannot say that I paid any attention to the conversation that evening.

Q. Now how many beds were there in that house at that time?

A. Two full-sized beds, and one single bed.

Q. Now, I suppose that you occupied one of those beds during that night did you?

A. Part of it I did.

Q. May I ask you what time you went to bed?

A. Very shortly after I arrived. To clear it up for [fol. 1450] you, I shaved and took a bath and immediately went to bed.

Q. And you stayed in bed until about 4:00 o'clock?

A. That is right.

Q. Had you arranged for some one to awaken you at that time?

A. Yes, sir.

Q. That was so that you could relieve one of the other parties that was with the defendant?

A. It was.

Q. And you did relieve him?

A. I did.

Q. And at the time you were awakened and went in, you found the defendant in the same room that you had seen him in when you first came to the house, did you?

A. That is correct.

Q. And he was seated in the same chair?

A. The same large overstuffed chair.

Q. And he was fully dressed at 4:00 o'clock in the morning?

A. I believe he was.

Q. And when he was taken up to the District Attorney's office he was kept handcuffed?

A. Yes, he was kept handcuffed continually until he was taken there.

Q. He was taken back to this house, was he not?

A. I cannot say I had other duties around the office [fol. 1451] that day—

Q. You cannot say?

A. I do know he made an arrangement to see Mr. Silverman alone with one of the officers looking at him from the adjoining room.

Q. If he left the District Attorney's office before he was taken back to the house, you have no knowledge about it?

A. I think he went out to lunch.

Q. You didn't see him?

A. I didn't see him personally. I told somebody to take him; I didn't see it personally, because I didn't go with him.

Q. And then getting back to the house, when you awakened at 4:00 o'clock, and when you got up at 4:00 o'clock, I suppose you got up and dressed and went into the room where the defendant was?

A. I put my clothes on, yes.

Q. And after you got there, you and the defendant and who else was in there then?

A. When I first came in, Jack Southard was there, or came in with me. We both had been sleeping until 4:00 o'clock that morning. John Martin was there, and Tom Cavett. They left about 4:30 or 4:00 o'clock.

Q. And then you remained personally with the defendant how long?

A. Until the time that we took him to 9th and Alvarado, [fol. 1452] and I would say that was about 9:00 o'clock.

Q. And on the trip to 9th and Alvarado, how long were you gone?

A. I didn't return to the house after we got to 9th and Alvarado.

Q. During the time that you were with the defendant, from 4:00 o'clock until you left for 9th and Alvarado, you were talking to the defendant, were you not?

A. Most of the time.

Q. And he was still fully clothed, was he not?

A. He was.

Q. And sitting in the same place where you had seen him seated when you first went there?

A. I think he had changed the position of his chair from the position he was in when I first saw him that night.

Q. During all these conversations you had with him there in the house, Mr. Silverman was not present, was he?

A. No, he wasn't present.

Q. No attorney was present at that time?

A. Oh, on one occasion Gene Williams was there.

Q. I am speaking of an attorney practicing law now.

A. I was the only attorney present. You didn't know I was an attorney, did you?

Mr. Clark: Oh, yes, I did, Mr. Griffen. I knew that several years ago. I am tempted to tell the story, but I

won't. When I said that one attorney was there, why, I [fol. 1453] beg your pardon. I didn't mean any discourtesy to you. What I mean was that no attorney was there who was engaged in the practice of his profession?

A. I don't know what you call it.

Q. During the time that you were talking, or during the time that you were there in the room of the defendant, about 9:00 o'clock, various of the men in the room took part in the conversation, didn't they?

A. As I told you before, I didn't pay any attention to that conversation. My recollection is that there were but two officers present with Mr. James when I arrived.

Q. And during the time that you remained in the room you knew that questions were being asked of Mr. James by more than one man?

A. I couldn't say that. I merely walked into the bathroom, to the kitchen, and I went into the bedroom, and into the bathroom to get a bath, and then walked through the room again, going to and coming back from my bath.

Q. Without going into anything that was said at the time you were awakened, there was some communication between Mr. Davis and Mr. Martin on the one hand, and you on the other, wasn't there?

A. There was conversation in the presence of Mr. James as to what had been said during the course of the evening.

Q. No, I was asking if there wasn't a communication to you by these men, out of Mr. James', presence, before you [fol. 1454] got up and got dressed?

A. Out of his presence?

Q. Out of his presence, yes.

A. The only communication was that it was 4:00 o'clock, time to get up.

Q. I didn't ask you what it was; I asked you if there was one?

A. That is the only one I know of.

Q. Now, during the remaining time before you went out to this house at 9th and Alvarado, both you and Mr. Southard took part in the questioning, didn't you?

A. May I have that question again?

(Question read by the reporter.)

A. I don't know just when you mean. Do you mean Sunday afternoon?

Q. I mean Sunday morning, between the hours of 4:00 and 8:00 o'clock.

A. Monday morning between 4:00 and——

Q. Monday morning was it?

A. Well, I don't know when you mean.

Q. I mean the morning that you got up at 4:00 o'clock. That was Monday morning, wasn't it?

A. Monday morning that I got up practically all of the conversation was between Mr. James and myself and Jack Southard.

Q. And both you and Mr. Southard asked Mr. James [fol. 1455] questions, didn't you?

A. That is correct.

Q. You or Mr. Southard determined the questions that were asked Mr. James, didn't you?

A. Naturally.

Q. Mr. James wasn't even asked whether he wanted to talk to you or not, was he?

A. He didn't say that he didn't.

Q. He wasn't asked whether he desired to be questioned or not, was he?

A. I don't know that I put that exact question to him, no.

Q. Some of the questions that you personally asked him he didn't answer, isn't that true?

A. I don't recollect of his ever refusing to answer a single question.

Q. Now, the same question was asked him several times on occasions, wasn't it?

A. I don't know that anybody sat and repeated questions. There may have been a question asked, and at some time during the course of the morning it may have been asked again.

Q. Sometimes questions were asked, and he just sat there without answering, isn't that the fact?

A. My recollection is that he very readily answered questions. I don't recall; there may have been some instance [fol. 1456] of some question he didn't want to answer, but I don't recall that.

Q. Isn't it a fact that to some questions he returned the answer that you could go to hell?

A. I wouldn't say that he ever told me that.

Q. Would you say he did not?

A. I would say he did not.

Q. Did he tell Mr. Southard that in your presence?

A. I have no recollection of his telling Mr. Southard that.

Q. Now, as I understand your testimony given a moment ago, the defendant was taken out to 9th and Alvarado, is that correct?

A. That is correct.

Q. You and Mr. Southard went with him?

A. No, he rode in a car with Mr. Davis and Mr. Kynett.

Q. Mr. Kynett is a police officer in the City of Los Angeles, I believe?

A. That is correct.

Q. When did Mr. Kynett join the party?

A. He came in while we were eating breakfast.

Q. Came in by arrangement, did he?

A. No, I had no arrangement with him at all.

Q. He just happened to drop in?

A. No, he was the man that furnished the Dictaphone on the case, and had been interested in it, and had been there [fol. 1457] every night until the time of the arrest, and that next morning he did come in.

Q. That is Mr. Earl Kynett, is it not?

A. That is right.

Q. And how long was he there before you started out on this expedition?

A. I can't recall exactly, but I don't think he was there over 15 minutes, or half an hour.

Q. Were you pretty busy during that 15 minutes or half hour?

A. Well, I am not in the habit of cooking breakfast, and when I cook breakfast it is quite a bit of work.

Q. Were you cooking breakfast while Kynett worked on the defendant?

A. No, I don't think Mr. Kynett worked on him.

A Juror: Will you speak louder.

By Mr. Clark:

Q. Did you hear any loud voices out in the room?

A. No.

Mr. Williams: If your Honor please, I think one of the jurors asked the witness a question.

The Witness. Asked me to speak louder.

Mr. Clark:

Q. Did you hear any loud voices out in the room where Mr. Kynett and the defendant were while you were getting breakfast?

A. I did not.

Q. Did you hear any loud noise of any kind out there? [fol. 1458] A. No, sir.

Q. Was any one else there in the room with the defendant and Mr. Kynett?

A. I don't recall that Mr. Kynett stayed in the living room. I think that when he came in the house he came to the kitchen where I was.

Q. Your recollection is that he was in the kitchen away from the defendant?

A. That is my recollection.

Q. And the defendant, you say, rode out to this house with Mr. Kynett?

A. And Mr. Everett Davis.

Q. You were in another car?

A. That is correct.

Q. And the car that the defendant rode in, I suppose Mr. Kynett was the driver?

A. I am not positive whether it was Mr. Kynett's car, or Mr. Davis' car.

Q. At any rate, one of them drove, and the defendant sat in the seat beside the driver, did he?

A. My recollection is he sat in the back seat; at least, he was sitting in the back seat when I saw him in front of the house at 9th and Alvarado.

Q. Was he in the back seat by himself, or was one of the other men in the back seat with him?

A. When I saw him he was by himself, and one of the [fol. 1459] officers was standing beside the car. He may have been riding in the back or the front; I am not sure.

Q. At that time the car was stopped?

A. That is correct.

Q. Did you precede, or follow that car?

A. Well, I can't say now which happened. At least, we both arrived at 9th and Alvarado.

Q. After going to 9th and Alvarado how long was it before you again saw the defendant?

A. It was about noontime, I believe.

Q. That would be noon of the same day?

A. That is correct.

Q. At that time you returned to the same house where the defendant had been?

A. No, that was in the office of the District Attorney.

Q. Oh. The defendant was again taken to the office of the District Attorney, is that correct?

A. He came into the office while I was there.

Q. You say he came in; you mean he was brought in, don't you?

A. He was in custody.

Q. Who was with him then, do you remember?

A. I am not positive just in whose custody he was when I saw him, but I believe it was Everett Davis.

Q. And he remained there in the District Attorney's office how long on that occasion?

[fol. 1460] A. I don't know what time he left the office. I didn't take him away. I asked one of the other boys to take him down to the house, and what time they left the office I couldn't say.

Q. Up to that time he had not been taken before any Magistrate?

A. That is correct.

Q. And no criminal charge of any kind had been filed against him?

Mr. Williams: Objected to as immaterial.

The Court: You may answer.

A. There had been no complaint filed.

Mr. Clark: Up to the time that you saw the defendant in the District Attorney's office he had not been permitted to sleep after he had been taken into custody? Now, let me reframe that question so that there will be no doubt in your mind about what it is. Up to the time that you saw the defendant in the District Attorney's office about noon Monday, he had not been given any opportunity to sleep since he was first taken into custody, isn't that true?

A. I can only honestly speak for the time that I saw him.

Q. Well, so far as you know that is the fact, isn't it?

A. During the time that I saw him he was not sleeping.

Q. You, I believe, are assistant chief investigator for the District Attorney, are you not?

A. That is correct.

[fol. 1461] Q. You were such Assistant Chief Investigator at the time to which your testimony relates, were you not?

A. That is correct.

Q. These other investigators were working under your direction, were they not?

A. That is correct.

Q. Now, when you saw him at the District Attorney's office on Monday, was any conversation had with him there?

A. At the District Attorney's office?

Q. Yes.

A. With Mr. Silverman.

Q. Oh, I thought the conversation with Mr. Silverman was on Sunday. Am I wrong?

A. No, I didn't say that. I said on Monday.

Q. Now, let's get the thing straightened up. Did the defendant see Mr. Silverman at all on his first visit to the District Attorney's office?

Mr. Barnes: That is objected to on the ground that it is indefinite. We don't know when Mr. Silverman's first visit to the District Attorney's office was.

The Court: I think the question should be reframed. It has some ambiguity.

Mr. Clark: Yes, I will reframe it.

The Court: The use of the personal pronoun made it ambiguous as to whether you were referring to the defendant or to Mr. Silverman.

[fol. 1462] By Mr. Clark: •

Q. Did you see Mr. Silverman in the District Attorney's office at any hour on Sunday, the day that you arrested the defendant?

A. I did not.

Q. It is a fact, is it not, that the defendant asked you on that day to communicate with Mr. Silverman?

A. I couldn't say that he did or that he did not. I have no recollection of it.

Q. By the way, you were in Mr. Fitts' room when the defendant was in there that Sunday, weren't you?

A. I was in there on one occasion when he was there.

Q. Isn't your recollection that the occasion that you were in there was on Sunday?

A. I don't know how many occasions he may have been in there. I was in and around the office on different occasions, and I was in the office on one occasion when he was there. Whether I was there every time he was in Mr. Fitts' office, I don't know.

Q. I didn't ask you that. On the occasion that you did see him in Mr. Fitts' office, you heard him ask Mr. Fitts to have Mr. Silverman there, didn't you?

A. I don't recall that.

Q. Didn't you hear Mr. Fitts tell him that Mr. Silverman was out of the City, and couldn't be reached?

A. I don't recall that.

Q. Didn't you hear him ask Mr. Fitts to have Mr. Parsons there?

[fol. 1463] A. No, I never heard Mr. Parsons' name mentioned at any time in regard to the defendant.

Q. After Mr. James' visit to the District Attorney's office on Sunday ended, how long was it before you again saw Mr. James?

Mr. Barnes: May it please the Court, that has been asked and answered on cross-examination before.

The Court: It may be preliminary to other questions. Answer the question.

A. After I left the office, which was between 5:00 and 6:00, I saw him again at the house at 9:00 o'clock.

By Mr. Clark:

Q. I am not speaking of Monday. There seems to be a misapprehension. I am speaking of Sunday.

A. That is what I am talking about, Sunday.

Q. I beg your pardon. I misspoke, myself. I am not speaking of Sunday; I am referring to Monday. Wasn't he there about noon Monday?

A. About noon Monday?

Q. Yes.

A. I wasn't down at the house during the day time at any time on Monday, excepting when I left there about 8:00 o'clock, when we went up to 9th and Alvarado, until 7:00 that night.

Q. You saw the defendant, then, when you went down to the house at 7:00 Monday night?

[fol. 1464] A. I can't be positive whether he was there when I arrived, or he arrived shortly after I did.

Q. You saw him in the same room that you had seen him in the day before?

A. He was in the living room that evening, yes.

Q. Wearing the same clothes?

A. Yes; I think he had a change of shirt, as I recall.

Q. Sitting in the same place?

A. He was sitting in the same chair, in just a little different location.

Q. With the same men in the room?

A. No, on Monday night—that is, at 7:00 o'clock, Harry Dean—Harry Dean wasn't there that night. I believe that is the night Gene Williams was down. I am not quite clear as to the night he was there, but I believe it was Monday night.

Q. Now, you hadn't seen the defendant in bed at any time up to that 7:00 o'clock visit, after he had been taken into custody, had you?

A. Well, he was in bed when he was taken into custody, and remained in bed for about 15 minutes afterwards.

Q. That was the last time you had seen him in bed, up until you went back to the house Monday night?

A. That is correct.

Q. You hadn't been present when he had had anything to eat, had you?

[fol. 1465] A. Oh, yes.

Q. When did you see him get anything to eat?

A. I had breakfast with him on Monday morning.

Q. You and he and Earl Kynett?

A. I had my breakfast, and at that time he had a cup of coffee.

Q. The coffee was given to keep him awake, wasn't it?

A. No, because he said that was all he wanted.

Q. That was all he got, anyway, wasn't it?

A. No, he got more afterwards.

Q. When?

A. I asked him if he wanted to eat after we got up to 9th and Alvarado, and he said he did, so I told the boys to take him out to eat.

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[fol. 1466] Mr. Clark: It is the substance of that testimony that until the defendant was booked at the County jail he was never handcuffed, so far as you know. Is that correct?

A. I had never seen him handcuffed, nor had I ever heard of him being handcuffed.

Q. And if the transcript of your testimony indicates any different answer from the one you have just given, there must have been some mistake in the transcript?

A. I am positive of that.

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[fol. 1467] Q. Now, I believe you stated that on Monday evening, the day following the arrest, Mr. Williams, the Deputy District Attorney seated at the counsel table here, came down to the house where Mr. James was being held?

A. I said that I was somewhat confused as to that. I know that he was down one of the two nights, Sunday or Monday night. As to which, I couldn't say. It might have been both, but I know that he was down one of those nights.

Q. Referring now to the morning of the Monday in question, what were the questions that you remember, leaving out of consideration the answers, what were the questions that you remember Jack Southard asking the defendant between 4:00 and 8:00 that morning, with regard to the death of the defendant's wife?

A. To attempt to give you all of the questions that were asked would be quite a task. I remember distinctly, as testified yesterday, the questions that were asked with [fol. 1468] regard to Madge Reed, and the defendant going down to Hermosa Beach, whether he had ever stayed all night at Hermosa Beach between the time of his wife's death, and the time the inquest was held.

Q. Well, as to those particular questions, Mr. Griffen, I assume you made no memorandum at the time?

A. No.

Q. But the substance of those is all that you can attempt to give now?

A. That is correct.

Q. And that as to any other questions with regard to the death of Mrs. James that were asked that morning, you haven't even the substance in mind?

A. Oh, I have some, yes.

Q. All right.

A. I could go on to quite some length, I think, as to what was said.

Q. Suppose for the purpose of testing your recollection I ask you to give us the substance of four or five more questions that Mr. Southard asked him?

A. He was asked concerning the death of his wife in Colorado. He was asked about the automobile accident, and subsequent drowning. He was asked about his movements from the time he left home the date of his wife's death, that morning up until about noon—or I believe he was asked about it the entire day.

[fol. 1463] Mr. Clark: Thank you. I think that that will be sufficient on that.

Q. Now, on each of these subjects he was asked a number of questions, was he not?

A. Yes, sir, he was asked a number of questions.

Q. You couldn't remember the exact language of any of them, could you?

[fol. 1470] A. I wouldn't attempt to give you exactly the language, no.

Q. And it was sometime the Tuesday following before he was booked at the county jail, was it not?

A. I think it was sometime about 11 o'clock when he went up to the county jail and was booked.

Mr. Clark: I have only three or four more questions, your Honor.

Q. Now, did you remain with the defendant from the hour of Monday evening that you have been discussing until he was booked in jail?

A. Was I with him in person?

Q. Yes.

A. No, I was not.

Q. But you—

A. What time do you mean?

Q. Well, I suppose that you were there at 7 o'clock that evening, were you not?

A. I arrived at about 7 o'clock, and I was there shortly after, and I was there until about 1 o'clock in the morning.

Q. About how long—Well, you have answered the question. You were there until 1 o'clock in the morning?

A. Yes, sir.

Q. Practically all that time you carried on some conversation?

A. I did not, no.

Q. When I say "you"—
[fol. 1471] A. Someone was.

Q. Someone in the group?

A. Yes.

Q. And after 1 o'clock Tuesday morning, when did you next see him?

A. What time after 1 o'clock Tuesday morning?

Q. Yes.

A. I would say that I got up about 7:30.

Q. And you stayed that night in the same house?

A. That is correct.

Q. Where in the house did you see him the next morning?

A. I don't know whether he was in the kitchen or whether he was in the living room when I first saw him.

Q. At any rate, when you did see him the next morning he was fully dressed?

A. He was.

Q. Then, as I get the sequence of the events, he was taken up to the jail and booked about 9 o'clock that Tuesday morning, if I have it correctly?

A. That is not what I said.

Q. What is the fact?

A. I didn't take him up and book him. At some time that morning, say 11 o'clock, I told someone to take him up and book him. Now, who it was, I don't know.

Q. You were not with him. I thank you for the correction. I had heard you, I guess, imperfectly yesterday, and since my hearing was imperfect, it might be that the same impression [fol. 1472] may have reached some juror. I don't want any juror to be under a misapprehension as to what you did say. As I get it now, you were not present when he was booked at the county jail?

A. That is correct.

Q. You were present at the house where he was being held until about 11 o'clock that Tuesday morning, is that correct?

A. No, I wasn't.

Q. I beg your pardon?

A. I gave the instructions that he be booked, down in the office. I had been working in the office since 9 o'clock in the morning and sometime during the course of the morning, I assume about 10:00 or 11:00, I—

Q. When you left for the office, you left him out in the house where he was being held, is that correct?

A. He left at about the same time I did, to come to the office.

Q. He was taken up to the District Attorney's office a third time, is that right?

A. That is correct.

Q. And was he, at any time while he was in the custody of your men, taken to any other place that you know of, that you haven't told us about? When I say "while he was in custody", I mean after his arrest, and before he was booked at the county jail.

[fol. 1473] A. The District Attorney's office, his house, the house next door and the county jail, are the only places I know that he was at during that time.

Q. Now——

A. When I said "his house" I meant the house on La Salle, adjoining the place that we were staying in.

Q. Now, did you see him in the District Attorney's office just about the time you gave instructions to book him at the county jail?

A. I think that I went in with the officers and told them to take him up to the county jail.

Q. Now, before that time you had only seen him struck once, is that correct?

A. That is correct.

Q. That was one blow struck by Mr. Southard?

A. That is correct.

Q. But at the time you last saw him at the District Attorney's office before he was booked, is it not a fact that both of his ears were bruised and swollen?

A. I would say not. He did complain about one ear being swollen and I looked at it and I said, "I can't see anything wrong with it".

Q. And if he had any sleep at any time from the time of his arrest until he was booked, you have no personal knowledge of it? That is a fact, isn't it?

A. You mean by that, I didn't see him asleep?

[fol. 1474] Q. You didn't see him asleep.

A. I didn't see him asleep, no.

Mr. Clark: I think that is all.

Mr. Williams: That is all. Is Jack Williams here?

JACK WILLIAMS, called as a witness in behalf of the People, being first duly sworn, testified as follows:

The Clerk: State your name, please.

The Witness: Jack Williams.

Direct Examination.

By Mr. Williams:

Q. Mr. Williams, what is your occupation?

A. Deputy Sheriff.

Q. Los Angeles County?

A. Yes, sir.

Q. Were you a deputy sheriff of Los Angeles County on April 21st, 1936?

A. Yes, sir.

Q. What were your duties at that time?

A. I was prowling the jail at that time.

Q. I can't hear what you say.

A. I was prowling the jail at that time.

Q. What does that mean?

A. Other officers worked in a certain section of the jail [fol. 1475] and then there are officers assigned to what they call "prowling". They work the entire jail.

Q. In other words, you worked the entire jail?

A. Yes.

Mr. Parsons: What day was that, Mr. Williams?

Mr. Williams: The 21st.

Q. Do you remember the occasion of Robert James being booked on that day?

A. I do.

Q. Were you present?

A. Yes, sir.

Q. Just tell us what you saw of the defendant at that time?

A. Mr. James came to the bathroom from the "I" room, or the identification room where he was fingerprinted and pictures taken.

Q. You will have to talk a little more loudly, because I can't hear what you say.

A. All right. He was brought to the "I" room and from the "I" room—The "I" room is the identification room where they take fingerprints and photographs. He was given a bath. His clothes was taken from him. He was

given blue denim. From there he goes to the hospital or to the tank.

Q. Is that the regular course of a prisoner going through the county jail?

A. It is, yes sir.

Q. Did you have any duties to perform at the time he was [fols. 1476-78] undressed and took his bath at that time?

A. To look his body over and also his clothes.

Q. Did you at that time, examine the body of the defendant?

A. I did.

Q. And did you observe any black and blue spots upon his body in any place?

A. None, no sir.

Q. Did you observe any cuts or abrasions of any kind or character at that time?

A. None whatever.

Q. Was it a part of your duty to observe and make a note as to whether there were bruises or cuts or abrasions upon a prisoner when he came in?

A. Yes, sir, of course. That is done in the bathroom. It is done in the booking office and also in the hospital and if there is anything of that sort on a person, because we don't know who they are, what they are in for, a record is made of that both in our office, which is the bathroom, and in the hospital. Then, that record goes down to the attorney's room and is put on the log.

Q. And in the case of this defendant you found no marks or bruises of any kind or character?

A. No sir, none.

Q. You made a note of none?

A. No, sir.

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[fol. 1479] W. C. PHILLIPS, called as a witness in behalf of the People, being first duly sworn, testified as follows:

The Clerk: State your name, please.

A. W. C. Phillips.

Mr. Clark: If your Honor please—

The Court: Yes?

Mr. Clark:—I have no knowledge as to what this witness is going to testify to, but we are willing to stipulate that

both his testimony on direct and cross examination will be the same——

Mr. Williams: Well, I wouldn't say that he was going to testify to the same matter, but he saw him on the same occasion, immediately prior to the time that——

Mr. Clark: Well, you don't think he saw him stripped?

By Mr. Williams:

Q. Did you see him stripped?

A. No, sir.

By Mr. Clark:

Q. Well, probably you saw him three or four times, and searched him——

A. I searched the man when he was booked in the jail.

[fol. 1480] Direct Examination.

By Mr. Williams:

Q. At that time did you observe any portion of his body?

A. With his clothes on, his face and hands, and without his hat, yes.

Q. Did you observe at that time any marks or bruises or discoloration upon his face, or head, or ears?

A. No, sir, there was none.

Q. Was it part of your duty in the jail to observe such matters when a man is booked?

A. Yes, because if there are any bruises, why we send him to the hospital directly.

Q. And do you make memorandum of such bruises, if any such bruises were there?

A. Yes, sir.

Q. Did you make any such memorandum in this case?

A. There wasn't any to make notes of.

Mr. Williams: That is all.

Cross Examination.

By Mr. Clark:

Q. Mr. Phillips, when you searched the defendant, did you run your hands down his body?

A. Very thoroughly.

Q. Running down, starting with his shoulders, clear down to the thigh joint?

[fol. 1481] A. Possibly.

Q. You had your right hand resting upon his right groin, just about where my hand is resting here now, didn't you?

A. I didn't leave my hands resting anyplace.

Q. Well, your hand ran over the right groin?

A. Possibly.

Q. And you felt swelling there?

A. Nothing pronounced.

Q. Whether pronounced, or not, you did feel a swelling there?

A. No, sir.

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EVERETT DAVIS, called as a witness in behalf of the People, being first duly sworn, testified as follows:

The Clerk: State your name, please.

A. Everett Davis.

Direct Examination.

By Mr. Williams:

Q. Mr. Davis, you are an investigator of the District Attorney's office of Los Angeles County?

A. That is correct.

[fol. 1482] And you were so engaged in the month of April, 1936?

A. I was.

Q. Do you know the defendant in this case?

A. I do.

Q. Do you remember having been in the company of the defendant at 3882 South LaSalle Avenue on Monday, the 20th day of April, 1936?

A. I was.

Q. Were you there during the night between Monday and Tuesday, April 20th and 21st?

A. That is correct.

Q. And do you remember my having appeared at that house that night?

A. I recall that, yes, sir.

Q. Now, were you present when I had a conversation with the defendant?

A. Present during that whole conversation.

Q. You were with the defendant when I started to talk with him, were you?

A. I was.

Q. Did you stay with him during the entire time that I talked to him?

A. Yes, sir.

Q. Thereafter did you stay with him after I had left?

A. During the greater portion of the night.

Q. Yes. Now, during the time that I was talking with [fol. 1483] the defendant, did I say to him in substance or effect that I had authority to promise him if he made a confession he would not receive the death penalty, but would receive life imprisonment?

A. There never was any such statement made.

Q. And did I say to him in substance and effect that if his crime was not too heavy I might be able to get manslaughter for him?

A. You did not.

Q. Do you remember what I did say on the subject of authority?

A. Well, I recall specifically that you told the defendant that no one in connection with this case had any authority to promise him anything, that we were particularly interested in the death of his wife, and that if he had any story to tell us, we would be willing to listen to it.

Q. And do you remember how long a time I talked with him?

A. Well, I would say it was the better part of two and a half or three hours.

Q. And during that time did I discuss any subject with him other than the facts of the death of his wife?

A. My best recollection is that was the only subject that was discussed. There was a possibility that some—in the early part of the conversation he might have referred to the particular incident that he had been arrested for the day prior.

[fol. 1484] Q. Now, were you present when he was arrested?

A. I was in the vicinity, but not present in the house.

Q. After I stopped talking to him, and left him, did you continue to stay with him the balance of the night?

A. That is correct.

Q. And who else was with you during the balance of the night with the defendant?

A. Well, there was at times, I believe, Mr. Cavett, and Harry Dean.

Q. Now, after I left him, did you have any conversation with him on the subject of sleep?

A. You are speaking now of the——

Q. The night between Monday and Tuesday, the same night I was there.

A. About a quarter to 4:00, or 3:30—I would say 3:30 or a quarter of 4:00 on Tuesday morning the defendant went to sleep, and was not aroused until about 8:00 o'clock, when he was called to the kitchen for breakfast, or whatever he wanted that was being served out in the kitchen that morning.

Q. Was breakfast being served in the kitchen that morning?

A. There was breakfast being served, hot coffee and breakfast.

Q. On the morning of Monday do you remember of going to 9th and Alvarado with the defendant?

[fol. 1485] A. That is correct.

Q. And after you went to 9th and Alvarado, did you see the defendant any place?

A. Yes, after stopping on the corner of 9th and Alvarado, we then proceeded to a cafe, one half block west of Alvarado, on Pico, where we had breakfast.

Q. Did the defendant eat breakfast at that time?

A. He did.

Q. That was Monday morning?

A. Yes, sir, that was Monday morning.

Mr. Williams: You may cross-examine.

Cross-examination.

By Mr. Parsons:

Q. Mr. Davis, you saw Mr. James for the first time on Monday morning, is that right, or isn't it?

A. I saw Mr. James for the first time in the early evening on Sunday.

Q. Sunday evening?

A. Yes, sir.

Q. About what time?

A. About what time?

Q. Yes.

A. I presume it was about 7:00 p. m. It may have been a few minutes later.

[fol. 1486] Q. And that was at the house the District Attorney had rented on La Salle Street, is that right?

A. That is correct.

Q. As I understand, Mr. Williams came there Monday night, is that right?

A. That is my recollection, that is correct, Monday night.

Q. And about what time did he arrive?

A. I am not certain as to the exact time that he arrived at the house.

Q. Approximately?

A. Well, it was after dark.

Q. After dark. At what time did he leave?

A. I would say in the neighborhood of 12 o'clock.

Q. And about 3:30 or 4:00 o'clock Tuesday morning you state the defendant fell asleep, is that right?

A. That is correct.

Q. And where was it that he slept?

A. He was in the front room at that address, seated in a large chair with his feet on another chair.

Q. And it is a fact, is it not, that as he sat in this chair and he put his feet on another chair, the man finally fell over and went to sleep, that is a fact, isn't it?

A. May I have that question again?

(Question read by the reporter.)

A. I will say that he went to sleep. He didn't fall over. [fol. 1487] Q. In any event he slept in one chair with his feet up on another, that is true, isn't it?

A. That is true.

Q. And sometime in the morning hours, early morning, 7:00 or 8:00 o'clock, you called him for breakfast, is that right?

A. I believe it was about 8 o'clock.

Q. And now, during the time that he was sleeping there in this chair, who was in the house besides yourself and the defendant?

A. Well, I believe Harry Dean, myself, the defendant, and I am not positive as to who was sleeping in the front room that evening, whether it was Mr. Griffen and Mr.

Southard, but I think they were there at that time; I am not positive of that.

Q. As a matter of fact, both the bedrooms had members of the District Attorney's office sleeping in them, did they not?

A. The front bedroom.

Q. Griffen and Southard were occupying the front bedroom were they not?

A. That is correct.

Q. And where were the other gentlemen?

A. They were in a separate bedroom in the middle of the house.

Q. And you were with the defendant in the front room, [fol. 1488] is that right?

A. Nearly all the time.

Q. I am speaking now of the morning of Tuesday, the early morning of Tuesday, this occurrence when you say that he went to sleep in a chair.

A. That is correct.

Q. Now, on Monday morning you stated that you went in and had breakfast in a restaurant near Ninth and Alvarado, is that right?

A. Pico and Alvarado.

Q. Pico and Alvarado?

A. Yes.

Q. And the defendant ordered some hot cakes and coffee, did he not?

A. I won't be certain. I am satisfied that he ordered breakfast. I won't be certain what he ordered.

Q. Well, does this refresh your recollection, that he ordered some hot cakes and coffee and after eating two or three pieces of the hot cake pushed it back and drank his coffee and said he didn't feel like eating?

A. I don't recall that particularly. We had our breakfast in the usual manner and proceeded out of the cafe. I don't recall any remarks that he made at the counter.

Q. You don't recall that he said anything?

A. That is correct.

Q. Do you recall anything that he ordered to eat?

[fol. 1489] A. Well, he might have had hot cakes; I am not certain of it.

Q. What was the name of the cafe?

A. I don't know.

Q. Where is it from the corner of Pico and Alvarado?

A. One half block up on the south side of Pico, between Alvarado and Hoover.

Q. A few doors down from the Security First National Bank, or are you familiar with that vicinity?

A. Well, it is a few doors from the corner.

Q. Was there any other person with you besides the defendant?

A. There was.

Q. Who was there?

A. Lieutenant Kynett of the Los Angeles Police Department.

Q. And when had he joined your party previous to that time?

A. As I recall it, he came to the address on La Salle about 6:00 or 6:30 in the morning. It might have been 7 o'clock.

Q. And went out with you and the defendant?

A. That is correct.

Q. Now, during Sunday night that you were in the house, who were there?

A. Sunday night? Myself and some other investigator. I [fol. 1490] think Mr. Charles Griffen and I think Mr. Southard, I am not certain of that.

Q. And referring again to the visit of Mr. Williams, you state that Mr. Williams discussed practically only the subject of the death of his wife with the defendant, James, is that right?

A. Excepting at the very opening of the conversation he might have referred to the incident that took place at the defendant's home, and the remaining portion of the conversation was relative to the death of his wife.

Q. So that except for a few minutes of the two and a half hours the balance of the time was devoted to a discussion of the death of the defendant's wife, is that correct?

A. That is right.

Q. Were you with the defendant when he was booked on Tuesday morning?

A. I was not.

Q. When did you last see the defendant on Tuesday?

A. If I recall correctly, it was in the Bureau of Investigation in the office of Assistant Chief Charles Griffen.

Q. At about what time?

A. Possibly 9:30 or 10 o'clock.

[fol. 1491] ROBERT P. STEWART, called as a witness in behalf of the People, being first duly sworn, testified as follows:

The Clerk: State your name, please.

The Witness: Robert P. Stewart.

Direct examination.

By Mr. Williams:

Q. Mr. Stewart, what is your occupation?

A. Chief Deputy District Attorney of Los Angeles County.

Q. And you have occupied that position for a number of years, have you not?

A. I have.

Q. Do you know the defendant, Robert S. James?

A. I have talked with him and seen him.

Q. When and where did you first see him?

A. The first time I saw Mr. James was on the Saturday that he was in my office. That was in May.

Q. That is, Saturday, the 2nd of May, is it, Mr. Stewart?

A. Well, the early part of May.

The Court: Assuming the second of May was the first Saturday, would that help you fix the date?

A. I think I can say to the best of my recollection it was about the 2nd or 3rd of May. It was Saturday, I recall that, because I went home Sunday morning.

[fol. 1492] By Mr. Williams:

Q. What time of the day was it when you first saw Mr. James?

A. I think, to the best of my recollection, it was about 1:00 or 2:00 o'clock of the afternoon of that day.

Q. And did you continue to be in his company for some time after you first met him?

A. Almost continuously from that time until he left with Deputy Sheriffs Killion and Gray to eat a meal. That was along about midnight.

Q. And thereafter, did you again see him?

A. I did.

Q. About what time and for what length of time?

A. I should judge that was about half past one or two, Sunday morning and at that time was in Mr. Fitts' office.

Q. And you were with him the first time in what portion of the District Attorney's office were you?

A. In my own office.

Q. Who were present besides yourself and the defendant?

A. Well, Davis was there, Killion was there, Gray and Fitts; I think some others came in and out about the first of it. I have forgotten who they were.

Q. During that time was he questioned?

A. Yes, sir.

Q. By whom was he questioned?

A. Principally by Mr. Fitts.

Q. And for how long a period was he questioned before [fol. 1493] he went out to get something to eat?

A. Well, it wasn't all questioning. There was a good deal of talk and discussion. I think he had some coffee and sandwiches about 6 o'clock. I think they all partook of that. I stepped out about that time for a short while. At the time he left to eat a meal, said he was hungry, with Mr. Gray and Killion, was along about midnight.

Mr. Parsons: May I have that last answer, please?

(Answer read by the reporter.)

A. It was about midnight.

Mr. Williams: During the entire time that he was there until he went to eat a meal, did you observe his manner, conduct and appearance?

A. I did.

Q. Will you describe that?

A. I sat immediately beside him, to the right, Killion to the left, Mr. Fitts across the desk, Mr. Gray behind me or to my right. He was calm, collected and cool.

Q. Was he rational or irrational in his talk?

A. He was rational.

Q. In his answers in the statements which he made was he coherent or incoherent?

A. He was coherent.

Q. And were his answers responsive to the questions which were asked of him?

A. They were.

[fol. 1494] Q. Did he at that time give any appearance of fright?

A. None whatever.

Q. During that entire time was there any force or violence used upon him?

A. None.

Q. Were there any offers or promises of immunity or reward held out to him?

A. None.

Q. Any hopes of immunity or reward extended to him?

A. None.

Q. Were all statements made by him freely and voluntarily made?

A. Yes, sir.

Q. About how long was he out with Killion and Gray when he expressed a desire to get something to eat?

A. Do you mean along towards midnight?

Q. Yes.

A. I should judge it must have been an hour or an hour and a half. That is only my recollection, my best recollection.

Q. After he returned where did you see him?

A. In the office of Mr. Fitts.

Q. Who were present at that time?

A. There were Chief Plummer of the Bureau of Investigation, Southard—I am not sure about Southard. Griffen, I recall sat in front of me. Dorothy Adams took the statement at the time. Mr. Fitts and myself, I am not sure about Southard or Davis. My recollection is that they [fol. 1495] were there, but I am not certain as to those two. Gray was there, Deputy Sheriff Gray and Deputy Sheriff Killion.

Q. At that time were questions asked the defendant?

A. Oh, yes.

Q. Who asked the questions?

A. Mr. Fitts.

Q. And did he make replies to those questions?

A. He did.

Q. Were the questions and answers taken stenographically by any person?

A. They were.

Q. By whom?

A. Dorothy Adams, a stenographer.

Q. And now, up to that time through and including the time that he made this statement, including the entire time

that he was making this statement had there been any force or violence used upon him to your knowledge?

A. No, sir.

Q. Any offers or promise or hope of immunity or reward extended to him?

A. None.

Q. Were all statements made by him, made freely and voluntarily?

A. They were.

Q. And now, will you please describe his manner, de-[fol. 1496] meanor and appearance during the time he was making the statement which was taken in Mr. Fitts' office at the time that you have just described?

Mr. Parsons: Object to that as already asked and answered.

The Court: Overruled.

The Witness: Did the Court rule on that?

The Court: Overruled.

A. He sat to the left of Mr. Fitts, at the end of the desk, very much in a relaxed attitude, smoking a cigar, perfectly composed and calm, and I should have said, in answer to your question, that Mr. Fitts had Mr. Hope brought in during the statement and confronted Mr. James while the questions were asked of Mr. James and Mr. Hope in the presence of each other, and Mr. James addressed remarks to Mr. Hope. During that time he was emotionless; there was no emotion whatsoever shown by him. He was just as calm and collected as anyone there.

Q. Did he, during that time, have the appearance of being excited?

A. He did not.

Mr. Williams: You may cross-examine.

Cross-examination.

By Mr. Parsons:

Q. As I understand it, Mr. Stewart, you first saw Mr. James on Saturday at about 1:00 P. M. shortly after lunch?

[fol. 1497] A. I should say possibly 1:00 or 2:00, that is as close as I could come to it.

Q. And almost continuously, to use your words, you were in his presence until about 6 o'clock, is that right?

A. Almost continuously covers my departure for a few moments or for five or ten minutes at a time.

Q. That occurred a few times during the course of the afternoon and evening, is that right?

A. Yes, it did.

[fol. 1498] Q. And during the afternoon, from between 1:00 and 2:00 o'clock until 6:00, there was continuous conversation going on there in the room, is that right?

A. Yes.

Q. And from time to time others of your investigators dropped in, is that right?

A. No, not very much after 2:00 or 2:30. The newspaper men were around there in flocks, and photographers, and they were sticking their heads in there about every five or ten minutes, so I just locked the door.

Q. So that after about 2:30 no other of your investigators came in?

A. There may have been one or two came to the door, and stopped in to ask a question, but I would not say to exceed three.

Q. And those men might have been Southard, Griffen or Davis?

A. It might have been Griffen, but I don't recall seeing Southard or Davis.

Q. You don't recall seeing Southard or Davis?

A. No, sir, I did not.

Q. But some time during the evening it is your best judgment that you did see Southard and Davis in and about the office while the questioning was going on?

A. I meant to state in my direct examination that I was not sure, but it was my recollection that Southard and [fol. 1499] Davis were present when Mr. James made his statement that was taken in writing.

Q. Now, at about 6:00 o'clock the parties there partook of some sandwiches, is that right?

A. I saw them drinking coffee there when I came back. I understood that they had sandwiches.

Q. You did not see them——

A. I did not see the sandwiches, because I think I went out about that time, because I had been left out of the sandwiches, and I got one for myself.

Q. Then some time shortly after 6:00 you returned, and when was it that the conference moved from your room into Mr. Fitts' room?

A. It never moved. We did break up by Mr. Killion and Mr. Gray taking Mr. James for a beef steak.

Q. When was that?

A. About midnight.

Q. And when did they return after that?

A. That, I should say, was about 1:30 or 2:00.

Q. And then where was the conference resumed?

A. In Mr. Fitts' office.

Q. Now, prior to Gray and Killion taking the defendant out, you had seen Southard about the office, had you not?

A. I don't think I saw Southard from the first—I arrived there about noon. He may have stepped into the room; I am not sure about that. It made no particular impression [fol. 1500] on me, his presence. He may have been there, but he was not in the room in the presence of James until midnight, anyhow.

Q. You knew, of course, that Mr. Southard had been working on this case for some time, some weeks?

A. I did.

Q. Now, during the course of the afternoon or evening, concerning the matters which took place, the defendant stated that he would like to see his attorney, Mr. Silverman, did he not?

A. He did not.

Q. If he did, you never heard it?

A. I did not.

Q. Do you know that he had some conversation with Mr. Fitts about that?

A. He didn't in my presence.

Q. Do you know whether or not any effort was made to reach Mr. Silverman?

A. None was made by me, and I have no knowledge of any one making any.

Q. If any effort was made, none was made in your presence?

A. None.

Q. And what time, finally, did this meeting terminate?

A. You mean in Mr. Fitts' office?

Q. Yes.

A. Well, I would have to figure back. I just judge about

[fol. 1501] 3:15 or 3:30. He talked for about an hour and a half at least in there.

Q. So it was about 3:15 or 3:30 Sunday morning when the meeting finally terminated?

A. I think that is a fair estimate.

Q. And Mr. James was then taken back, as far as you know, to the County jail?

A. He left my presence with Mr. Gray and Mr. Killion.

Q. With Mr. Gray and Mr. Killion?

A. With Gray and Killion, I think.

Q. Now, at any time during the course of these meetings, or this meeting, which took from about 1:00 to 2:30 in the afternoon until about 3:30 Sunday morning, was any request made at any time by the defendant for permission to see any person?

A. Not that I heard.

Q. Not that you heard?

A. No, sir.

Q. You knew, of course, did you not, Mr. Stewart, at this meeting that there had been a previous meeting between the defendant and certain of the investigators of the District Attorney's office, upon the 19th and 20th and 21st of April, did you not, at a house which had been rented by your office?

A. Oh, I didn't know about that. I had other duties to attend to. I didn't know that.

[fol. 1502] Q. You didn't know that?

A. I knew that he had been arrested—in fact, I got most of that out of the newspapers, because I was very busy with other matters.

Q. I grant you that you have many matters to attend to, and I am not trying to heckle you, Mr. Stewart. Did you know of this meeting?

A. No, I didn't have any knowledge of that meeting.

Q. Did you know that during the course of one of the meetings with Mr. James and Mr. Southard, that Mr. Southard had taken occasion to slap Mr. James?

Mr. Barnes: I object to that as already answered.

The Court: Objection sustained.

Mr. Parsons: Very well; that is all.

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[fol. 1503] Redirect examination.

By Mr. Williams:

Q. Mr. Stewart, was there anything said by the defendant at any time on the 2nd or 3rd of May to you, or in your presence, with respect to any physical violence having been used upon him?

A. Yes, sir.

Q. What did he say?

A. You want what he said alone?

Q. The entire conversation.

A. Well, the conversation occurred between Mr. Fitts and Mr. James. Mr. Fitts asked Mr. James how he had been treated by the boys. Mr. James said Jack Southard had slapped him. Mr. Fitts asked him what he had done. He said "Nothing." Fitts turned to me and said, "Will you look into it?" I said I would, and I did.

Q. Was that the extent of any statement made by Mr. [fol. 1504] James with reference to any force or violence having been used at any time upon him?

A. That is all I heard him say.

Q. Did he say when that slap had taken place?

A. He did not.

Q. Now during the time that James was there in the office, and you were there also, was Southard, to your knowledge, ever in the company of James alone?

A. He was not, to my knowledge.

Q. Was there any person who, so far as your observation went, was continuously with James?

A. To the best of my recollection Gray and Killion, or either of them, were with him at all times.

Mr. Williams: That is all.

Mr. Parsons: That is all.

CLEM PEOPLES, called as a witness in behalf of the People, being first duly sworn, testified as follows:

The Clerk: State your name, please.

A. Clem Peoples.

Direct examination.

By Mr. Barnes:

Q. Mr. Peoples, what is your business or occupation?
[fol. 1505] A. I am Deputy Sheriff, Chief Jailer of the County of Los Angeles.

Q. Have you been Chief Jailer during the entire year 1936?

A. Yes, sir.

Q. You were such Chief Jailer on or about the 21st of April, 1936?

A. Yes, sir.

Q. Calling your attention to the defendant, Robert James, do you recognize him?

A. Yes, sir.

Q. Within a day or two after the defendant was booked at the County Jail which was, as I understand, about the 21st of April this year, did you see him?

A. Yes, sir.

Q. And at that time did you talk to him?

A. Yes, sir.

Q. Did you notice any marks, bruises, scratches or mars of any kind about his person that you could see, that portion of the person that you could see?

A. Well, he was dressed in his dungarees, and the portion of him I saw was his face and his hands. I didn't notice any marks on him at that time.

Q. And did he make any complaint to you about mistreatment at that time?

A. No.

[foi. 1506] Q. What was the occasion of having the conversation?

A. It had been reported to me that James was a little bit sullen to the checking officers, and I called him in to have a little talk with him, as I do in many instances of that kind.

Q. Just as jail discipline?

A. Yes, that is right.

Mr. Parsons: I move to strike it out as incompetent, irrelevant and immaterial.

The Court: Overruled. I think it is proper to show the occasion.

Mr. Barnes: Cross-examine.

Cross-examination.

By Mr. Parsons:

Q. As a matter of fact, Mr. Peoples, when Mr. James came to your office for the first time, that was days after he had been booked, was it not?

A. As I recall, it was two or three days, possibly the second or third day afterwards. I only met him in the office once.

Q. Can you tell us when that day was?

A. I wouldn't want positively to state. It was my understanding that it was a few days after he was booked.

Q. Now, was any slip signed, or any record made of the visit of James from a tank to your office?

[fol. 1507] A. No sir.

Q. No record of the movement of the prisoner was recorded?

A. We do not record when I call a man into my office.

Q. Now, upon this occasion that you state James came to your office, there was a newspaper reporter or photographer there, was there not?

A. Not the first time I talked to him.

Q. Then there was another time?

A. I think there was one other time that I asked him whether he wanted to have his picture taken, or something to that effect.

Q. There was an occasion when Mr. James came to your office, and there was a newspaper photographer there, and you asked Mr. James if he cared 'o pose for a photograph, and he said he did not?

A. That is right.

Q. And there was some little words passed between the parties there?

A. Between whom? To whom?

Q. The parties there present.

A. I do recollect there were some newspaper men in there. There was no particular argument. I think the gentlemen were trying to convince James that he should have his picture taken, and he said, "You have got enough pictures of me."

[fols. 1508-1509] Q. Did you take any part in the conversation?

A. I might have said—I don't remember directly, but I might have said, "James, it is better to have these pictures taken now, rather than have your jail pictures printed."

Q. Is that what you said?

A. I do not have police pictures taken in the jail.

Q. I did not mean that you did. Now, there were two men came to your office?

A. I remember that now.

.

[fol. 1510] Recross-examination.

By Mr. Parsons:

Q. What tank was he in at that time, at the time of this first visit concerning which you have testified?

A. "High-power", if I remember correctly. It was the "High-power".

Q. What number is that?

A. That is 12-A-1.

Q. 12-A-1?

A. Yes—12-A-2 would be correct; the outside tanks are "1", and the inside tanks are "2".

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[fol. 1511] HARRY DEAN, called as a witness in behalf of the People, being first duly sworn, testified as follows:

The Clerk: State your name, please.

A. Harry Dean.

Direct examination.

By Mr. Williams:

Q. Mr. Dean, what is your occupation?

A. Investigator for the District Attorney's office, Los Angeles County.

Q. You were such on the 19th, 20th and 21st—

Mr. Parsons: Will his evidence be similar to that—pardon me. Go ahead.

By Mr. Williams:

Q. —on the 19th, 20th and 21st days of April, 1936?

A. I was.

Q. Were you present at the time that the defendant, James, was arrested in his home at 3886 South LaSalle Avenue, Los Angeles?

A. I was.

Q. Who was present at that time?

A. Lois Wright, Mr. James' niece, the defendant, Mr. James, Investigators Southard, Charles Griffen of our office, and I believe you, yourself were present, Mr. Williams.

Q. Immediately following that, and after, were you in [fol. 1512] company of Mr. James from time to time, during the days of the 19th, 20th and 21st of April?

A. I was.

Q. Did you have conversation with him during that period?

A. I did.

Q. Did you hear others engage in conversation with him?

A. I did.

Q. Did you observe his manner, appearance and demeanor during the time that he was being questioned by yourself and others?

A. I did.

Q. Describe it?

A. He was about the coolest man I ever came in contact with.

Mr. Clark: I move to strike that out as not responsive, and calling for a conclusion of the witness.

The Court: The answer will be stricken.

A. He was very cool and collected.

By Mr. Williams:

Q. Did he at any time appear to be frightened?

A. Not a particle.

Q. Was his conversation rational or irrational?

A. Very rational; very much so.

Q. Was he coherent, or incoherent in his conversation?

A. Coherent; very much so.

Q. And were his answers responsive to the questions [fol. 1513] that were asked of him?

A. Yes, to all of them.

Cross-examination.

By Mr. Clark:

Q. Mr. Dean, you say you have been connected with the District Attorney's office how long?

A. A little over six years, Mr. Clark.

Q. Were you ever connected with that office on any prior occasion before that six years.

A. I am not the same Harry Dean, Mr. Clark.

Q. I thought I recognized you is why I asked you the question. Mr. Dean, during the time that you saw the defendant he was at a house adjoining the one he had formerly resided in?

A. The first time I saw him?

Q. Yes.

A. No, sir. I saw him in his own home the first time.

Q. That was at the time of the arrest?

A. Yes, sir.

Q. At that time, shortly after he was taken into custody, he was taken to an adjoining house, wasn't he? That is, he was told to go, and went? Is that right?

A. On the first occasion?

Q. Yes.

[fol. 1514] A. He was taken to the house we had been occupying.

Q. He was told to go there, told to come on?

A. He was invited to go and see the Dictaphones we had installed.

Q. And was he invited to go to the District Attorney's office subsequently?

A. He was under arrest. He was taken to the District Attorney's office.

Q. And when he was taken to the District Attorney's office he was seated in the office, wasn't he?

A. I don't know, Mr. Clark; I didn't go with him?

Q. Were you at the house when he returned?

A. No, sir, not that day.

Q. When did you next see him after he was taken to the District Attorney's office?

A. About 9:00 o'clock, I believe, on Monday night. The arrest was made Sunday morning.

Q. And you were with him from 9:00 o'clock until what time?

A. About 6:00 o'clock the next morning.

Q. You sat up all night that night, did you not?

A. I did.

Q. You didn't?

A. I did.

Q. Oh, you did. During that period from 9:00 in the evening until 6:00 in the morning, Mr. James did whatever [fol. 1515] he was told to do, didn't he?

A. We just sat there and talked most of the time.

Q. If he was told to do anything he did it, did he not?

A. There wasn't anything I know of that he was told to do.

Q. You were at work that night investigating the murder of Mrs. James, were you not?

A. I didn't have any definite instructions that particular night.

Q. During that night that you were sitting up, at that time was any one else sitting up with you?

A. Yes, there were numerous officers present.

Q. And who were they?

A. Investigator Davis from our office.

Q. Did he sit up all night, too?

A. Yes, sir.

Q. Any one else?

A. Deputy Sheriffs Gray and Killion were there, I believe, until midnight.

Q. Did they sit up all night, also?

A. No, they left about midnight. Investigator Southard was there.

Q. He went to bed rather early, didn't he?

A. Sir?

Q. He went to bed rather early, didn't he?

A. I couldn't recall just exactly when he did. It was [fol. 1516] around midnight or after. I am just guessing at that; I don't know. I believe—I know that Deputy District Attorney Williams was there, too, if I am not mistaken.

Q. How long did Mr. Williams stay?

A. I believe he stayed all night. I wouldn't swear to that.

Q. During that night various of the officers were asking the defendant questions, weren't they?

A. Yes—not the whole night, no.

Q. Was there any time that night when the conversation was not progressing?

A. Yes.

Q. How long?

A. I think it was around 3:00 o'clock that Mr. James went to sleep.

Q. Did he undress?

A. No.

Q. How long did he sleep?

A. I left around 6:00 in the morning. Some one came to the house; I don't know whether it was a newspaper reporter, or who it was, and rang the doorbell, and I think that is what woke up Mr. James.

Q. At the moment that he went to sleep some one was asking him questions, weren't they?

A. When he went to sleep?

Q. Yes.

[fol. 1517] A. We were talking until the time he did go to sleep.

Q. Was Mr. James taken anyplace besides to the District Attorney's office, so far as you know personally?

A. I couldn't answer that, Mr. Clark.

Q. I take it that that means that you have no personal knowledge of his being taken there?

A. No, I have not.

Q. When did you last see Mr. James before you saw him in court?

A. When I left the house on Tuesday morning I believe was the last time.

Q. Did you see him on the 2nd of May?

A. I don't reconcile that date at all, Mr. Clark, the 2nd of May.

Q. Did anybody strike him while you were there?

A. No, sir.

Q. Did you notice at any time his ears being swollen or bruised?

A. I never saw anything like that, no, sir.

Q. And you never saw any bruise on either of his ears?

A. I did not.

Mr. Parsons: That is all.

Redirect examination.

By Mr. Williams:

Q. Prior to Mr. James going to sleep, was anything said [fol. 1518] on the subject of sleep by anybody?

A. It might have been by myself, that I was getting groggy; that is all.

[fol. 1519] JOHN S. MARTIN, called as a witness in behalf of the People, being first duly sworn, testified as follows:

The Clerk: State your name, please.

The Witness: John S. Martin.

Direct examination.

By Mr. Williams:

Q. Mr. Martin, what is your occupation?

A. Investigator of the District Attorney's office.

Q. And you were such investigator on the 19th and 20th and 21st days of April, 1936?

A. I was.

Q. Do you know the defendant, Robert S. James?

A. I do.

Q. Were you in his company at any time on the days I have mentioned?

A. Yes, sir.

Q. For what period of time and when?

A. I was with him Sunday night, the 19th of April, until about 4:30 Monday morning, and I was with him Monday afternoon, most of the afternoon, and Monday evening until about 9:00 or 9:30.

Q. During the time that you were with him was any force or violence used upon him?

[fol. 1520] A. There was none.

Q. Any offers or promise or hope of immunity or reward extended to him?

A. There was not.

Q. And did he have a conversation with you during that period of time?

A. Yes, sir.

Q. And there were others in your presence?

A. There were.

Q. What would you say as to his manner and demeanor and appearance during the time that he was with you?

A. He was very cool and calm.

Q. Did he appear at any time to be frightened?

A. No.

Q. Did he make any complaint to you about having been injured by any person during that time?

A. Monday evening he told me that Southard had slapped him.

Q. Did he make any other complaint?

A. He did not.

Q. At the time that he told you that Southard had slapped him, did he appear to be frightened?

A. No.

Q. Were the answers which he made to you coherent and responsive to the questions that you asked?

A. They were.

[fol. 1521] Q. Did you have any conversation with him on the subject of a hernia?

A. I did.

Q. When did that conversation take place?

A. Sunday night.

Q. What did he say?

A. We were questioning him about the incident that happened in Colorado and he told us about the car going over the bank and about the car and his wife were down some 200 feet and he went down about 50 feet and fell out of the car. Mr. Cavett asked him if he received any injuries in the accident himself and he said he received a hernia.

Mr. Williams: You may cross examine.

Cross examination.

By Mr. Parsons:

Q. When was it that you discussed that phase of your proposed testimony with anybody?

A. What?

Q. When, referring—

The Court: Well, the question assumes something not in evidence.

By Mr. Parsons:

Q. Have you ever discussed your testimony here with anybody at all?

A. What do you mean?

Q. Well, I will try and make it plainer. Have you ever, [fol. 1522] prior to taking the witness stand, discussed your proposed testimony here with any human being?

A. Not testimony. I reported the next morning to Mr. Griffen the conversation during the night.

Q. Did you report that in writing?

A. No.

Q. As a matter of fact, Mr. James told you that he had had a scuffle with Griffen too, did he not?

A. No.

Q. Did you see anybody hit James?

A. I did not.

Q. And now, you arrived on the night of the 19th, is that right?

A. That is right.

Q. About what time?

A. About 7:30.

Q. And where was James when you saw him?

A. Sitting in a chair in the front room.

Q. And that chair is the same chair that he continued to occupy until he was taken from the house and booked, except for short intervals, isn't that right?

A. Well, he occupied two different chairs while I was there.

Q. He occupied two different chairs while you were there?

A. Yes, sir.

Q. In the front room?

[fol. 1523] A. Yes, sir.

Q. And from the time that you arrived Sunday night, how many hours elapsed before you left?

A. I left there about 4:30 Monday morning.

Q. You left there about 4:30 Monday morning?

A. Yes, sir.

Q. And who was in the house between 7:30 Sunday night and 4:30 Monday night?

A. Well, Tom Cavett was there and Charlie Griffen and Jack Southard and Everett Davis. That is all I recall.

Q. And during the time that Mr. James was sitting in the room, Sunday night or Monday morning, there was conversation going on, is that true?

A. That is true.

Q. Practically all the time?

A. That is right.

Q. And you left at 4:30 or thereabouts, Monday morning, and when did you return?

A. I took Mr. James back to that house Monday evening about 7:00 o'clock.

Q. Where did you pick him up at?

A. At the District Attorney's office.

Q. And how long were you there upon that occasion?

A. Until about 9:00 o'clock.

Q. Until about 9:00 that evening?

[fol. 1524] A. Yes, sir.

Q. And did you then leave?

A. I did.

Q. Did you see him again after that, after he was booked?

A. I never did.

Q. And during the time that you were there between 7:00 and 9:00, there was conversation going on, was there not, with Mr. James and those present?

A. There was.

Q. And he was again at that time seated in the chair, was he?

A. Yes sir, that is right.

Q. It is a fact, that any time that you were in the house on La Salle Street, you didn't see Mr. James slapped?

A. No sir, I did not.

Q. Did you see him take his clothes off at any time while you were there?

A. Yes, sir.

Q. Did he take a shave at any time between the time he was arrested and the time he was booked?

A. Not in my presence.

Q. Well, when you saw him Monday, he had a growth of beard, did he not?

A. Well, I wouldn't say positively.

Q. You wouldn't say?

A. No, sir.

[fol. 1525] Q. Did you observe his face?

A. I wouldn't say whether he had a shave or not; I don't know.

Q. Did you look at his ears and notice his ears, and notice whether they were red or not?

A. Nothing that I noticed; I didn't examine them.

Q. You didn't look at his head closely?

A. Not closely, no sir.

Q. And was Mr. Griffen there during the time that you were there?

A. Mr. Griffen was there Sunday night, yes.

Q. Was he there Monday night?

A. I think he arrived just a few minutes before I left Sunday night.

Mr. Parsons: That is all.

Redirect examination.

By Mr. Williams :

Q. Before you took the defendant to the house on La Salle Street from the District Attorney's office, did you take him any place else?

A. I did.

Q. Where did you take him?

A. I took him to Alex's Cafe, just went off Broadway on Temple Street.

Q. And what did the defendant do there?

[fol. 1526-1629] A. We had dinner.

Q. Do you remember what he had?

A. T-bone steak, potatoes and coffee and bread and butter.

Mr. Williams: That is all.

Recross examination.

By Mr. Parsons :

Q. What time was that, Mr. Martin?

A. We left the office about 6 o'clock and went to Alex's Cafe.

Q. Which cafe?

A. Alex's Cafe.

Q. Alex's Cafe?

A. Yes, sir.

Q. On Temple Street?

A. That is right.

Q. Do you know who served you?

A. I couldn't say.

Mr. Parsons: That is all.

Mr. Williams: That is all.

* * * * *

[fol. 1630] ALFRED DINSLEY, called as a witness in behalf of the Defendant, being first duly sworn, testified as follows:

The Clerk: State your name, please.

The Witness: Alfred Dinsley.

Direct examination.

By Mr. Clark:

Q. During the month of last August, where did you live?
[fol. 1631] A. At 4242 Verdugo Road, El Canada.

Q. And do you know where your residence—by the way, you are still living there?

A. Yes, sir.

Q. And do you know where that residence is located with reference to 1329 Verdugo Road?

A. Well, I would describe it as a northern angle of a rectangle.

Q. As I understand, four houses are on the same piece of property, is that right?

A. Yes, the same property.

Q. And there are some two or three houses on the same parcel, as I gather it?

A. Yes, sir.

Q. Now, you have been in attendance upon the court here and have seen the maps and diagrams?

A. I have seen one diagram, Mr. Clark.

Q. Do you understand that diagram that is marked People's Exhibit 2, I believe it is here? This is supposed to be a diagram of the premises at 1329 Verdugo Road, the house being shown at the extreme lower end of the map, which is south.

A. Yes, sir.

Q. And the other premises being shown in the rear?

A. Yes, sir.

Q. Directing your attention to the chicken houses and chicken yards was there any place where you had a clear [fol. 1632] view from other parts of the land of those buildings?

A. I rarely came beyond here, but there was a clear view right through here down to here.

Q. Thank you.

Mr. Williams: May we have it indicated for the purpose of the record?

The Court: The upper portion of the diagram, indicating the northerly portion of the premises, approximately down the line of the center of the diagram toward the south to the point marked "gate" and down the place marked

"walk" to the place again marked "gate," to the place still further toward the south or lower part of the diagram to the point where the concrete walk ends just north of the table, referring to the concrete platform and the table outdoors.

Mr. Clark: Now, directing your attention to Monday, the 5th day of August, 1935, was your attention directed to those premises at any time that morning?

A. About 9:25.

Q. Where were you at that time?

A. May I use the diagram?

Q. You may.

A. If I had a blackboard I could show it better. The property in which I live is here and here.

Q. Indicating the northern margin of the diagram.

A. From about where the north indication is. I understand 512 feet right through. I live 60 feet this way. [fol. 1633] Q. 60 feet to the west?

A. Yes. And at one time in this north east corner—or north west corner there used to be a shed in which I stored laboratory apparatus and I was almost a daily visitor there. If I wished to check up on any chemical work or research work I was doing, I would go down there.

[fols. 1634-1663] On August 5th I went down there and took some household garbage that was combustible. This diagram is wrong—oh, no, I beg your pardon. The shed was here. I came here and took the garbage and went straight down this path to the incinerator. This incinerator was for Dr. Billings, myself, and the James property.

Mr. Clark: Now, looking over at the property, the James property, 1329 Verdugo Road, at that time what did you do?

A. As soon as I left the small shed with my burning stuff, stuff to be destroyed, as I came down and was about to branch off to the incinerator, what attracted my attention was a pit bulldog inside this gate.

Q. That is, inside the gate on the James premises?

A. Yes.

Q. Thank you.

A. This dog attracted my attention, and in this chicken-house, in the door of the chicken house there was a body, a part of a female hanging out. The dog barking attracted her attention. She came out, stared me full in the face,

half smiled, then resumed her duty, and I carr-ed on with mine.

Mr. Clark: You may cross examine.

Mr. Williams: No questions.

* * * * *

[fol. 1664] ALFRED DINSLEY, resumed the stand and testified as follows:

Direct examination.

By Mr. Parsons:

Q. Now, Mr. Dinsley, you have stated that about 9:25 or 9:30 on the morning of August 5th last year you saw a [fol. 1665] woman in the vicinity of the chicken yard on the James premises at 1329 Verdugo. Now, briefly describe that woman to the jury. How tall was she approximately?

A. At the distance from the place where I was standing I would say 5 foot 8 or 5 foot 9.

Q. Can you tell us the color of her hair?

A. Blonde.

Q. Blonde?

A. Yes, sir.

Q. And can you say whether the woman was young or old?

A. She was mature.

Q. She was mature?

A. Yes, sir.

Q. And is that as far as you can go?

A. Yes.

Q. Now, I will ask you whether or not approximately she was 30 or 35 years of age?

A. Mr. Counsel, at the range of 25 feet it is impossible to tell the age of a woman, even at short range.

Q. Well, I grant you that.

Mr. Clark: The witness is a good observer.

Mr. Parsons: Excuse me for smiling. It was not at you, but at my own questioning.

A. All right.

Q. Now, have you observed upon the James premises prior to that time, a woman similar in appearance to the

[fol. 1666] woman whom you observed out by the chicken coop?

[fol. 1667] A. Only insofar as that at the greater distance, as can be seen demonstrated by this diagram, I had seen a female, obviously not a man.

* * * * *

Mr. Parsons: Yes, I will go at it in a little different fashion.

Q. Prior to August 5th, 1935, had you seen a woman upon the James premises before, within say a month or two prior to the occurrence that you have related?

A. I had, but at a much greater distance.

Q. How many times had you seen a woman on the James premises within a month or two prior to the occurrence on August 5th, 1935?

[fol. 1668] A. Approximately four or five occasions.

Q. Now, will you tell us whether or not there was any similarity?

The Court: Well, just before you get to that, let's find out whether or not on the four or five occasions it was the same woman.

Mr. Parsons: Yes.

Q. Now, this woman whom you saw upon the four or five occasions, Mr. Dinsley, prior to August 5th, did it appear to you to be one and the same individual?

A. Mr. Counsel, that I cannot say.

The Court: Did it, or didn't it?

By Mr. Parsons:

Q. The question is did it appear to be? Was she similar in appearance?

A. In general appearance, yes.

Q. Similar in general appearance?

A. Yes.

Q. A blonde, was she?

A. At the distance which she was standing from me on the prior occasions, I couldn't tell you whether she was a blonde, brunette, or a composite of the two.

Q. Now, from seeing the woman four or five times upon the premises, and the woman whom you saw on August 5th, could you tell us whether or not there was any similar-

ity between the person whom you had seen previously, and the person whom you saw on the morning of August 5th? [fol. 1669] A. There would be some similarity.

Q. Would you say the woman whom you had seen before was of the same general appearance?

Mr. Williams: Just a moment. I think on a matter of this sort the witness should not be led, if your Honor please.

The Court: I think I will ask the witness this question, myself: Will you state what similarities there were between the woman you saw on August 5th, and the woman that you saw on any or all of the former occasions?

A. Yes, sir, your Honor. In all cases the party was wearing a female dress, and had all the characteristics of a female. Beyond that I cannot go.

By Mr. Parsons:

Q. Now, how was this woman dressed on the morning of August 5th, if you recall?

A. She was bareheaded, and wore a rose or rust-colored smock, her stocking legs were visible to below the knee, and she apparently was wearing woman's shoes.

* * * * *

[fol. 1670] The Court: I will ask the witness: Did you ever see a woman who was pointed out to you, or to whom you were introduced, as Mrs. James?

A. Never, sir.

Mr. Clark: Your Honor's question clarifies the situation.

The Court: I think so. I would like to ask the witness one more question: You used the term "smock". Some men are able to correctly name women's garments, and some are not. Can you describe just what you mean by "a smock", or describe the particular smock as to character?

A. Yes, your Honor. I assume it was a smock, because it was belted at the waist, and obviously not of the pajama or divided skirt type of garment.

* * * * *

The Court: In other words, the garment seemed to be merely a coat-like garment?

A. Just a typical wife's covering. On bending the posterior part of the garment was elevated, naturally.

The Court: So you could see above the knees?

[fol. 1671] A. Yes, sir.

The Court: Did you get a full view of this person?

A. Yes, a full view.

Q. Can you recall did you observe whether this garment, this smock, was fastened in the front or in the back?

A. No, sir.

Q. In other words, you can't tell whether it was open in the front?

A. No, sir. It may have been a pull-over.

The Court: Proceed.

Mr. Parsons: That is all, Mr. Dinsley, thank you.

Mr. Williams: I have no questions. Captain Southard, will you take the stand.

J. C. SOUTHARD, recalled as a witness in behalf of the People, having been previously sworn, testified as follows:

Direct examination.

By Mr. Williams:

Q. Captain Southard, during any of the time that Mr. James was in the presence or company of Mr. Fitts, when you were there, did Mr. Fitts say to him anything to the effect that he had better clear up the whole thing to save expense?

A. He did not.

Q. Now, I observe on Page 1096 of the transcript, line 21 to 24, inclusive, a question and answer. I wish you [fol. 1672] would read those. Now, it appears from the transcript that in response to a question asked by Mr. Clark, you testified as follows: "Q.—Did Mr. Fitts say to him, in substance, that he had better clear the whole thing up and save a lot of expense? A.—No, sir, not at that time. That was in this case here."

Did you understand that you were testifying to the effect that Mr. Fitts had made such a statement?

Mr. Clark: Just a moment. That is objected to as leading and suggestive.

The Court: I think it was covered by the previous answer that there was no such statement made.

Mr. Williams: Yes.

Q. Now, did you at any time during the 2nd and 3rd days of May, 1936—were you at any time during those days alone with Mr. James?

A. I have never been alone with Mr. James.

Q. Yes. Now, did you on or about 10:00 o'clock p. m., on the 2nd day of May, 1936, while James was sitting at a desk there in Mr. Fitts' office, or the office next to it, or at any place, or at any time, say to James in substance: "You have been sitting here lying to Fitts all evening just like you lied to me when I had you out at the house. I didn't have the dope on you then, but I have got it on you now. You are going to tell the truth here now or I am going to take you back to that house and I am going [fol. 1673] to beat your God damned head off"? Did you say that?

A. I did not.

Q. Or any part of it?

A. I did not.

Q. And did he, in response thereto, or at all, or at any other time, tell you that he was ill from being beaten up before, that he would say what you wanted him to say, rather than take other punishment?

A. He did not. He made no such statement.

Q. Or any part of such statement?

A. He did not.

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[fol. 1674] Cross-examination.

By Mr. Clark:

Q. Mr. Southard, were you present when the defendant was booked?

A. I booked him, yes.

Q. Now, where did you take him in the County jail on that occasion?

A. I wouldn't be positive, Mr. Clark, but I believe at Room 672, the Bureau of Investigation of the District Attorney's office.

Q. And who went with you?

A. Captain Kynett of the Los Angeles Police Department.

Q. Did he come through the County jail?

A. That is the best of my recollection, yes.

Q. Now, as a matter of fact, on the day that Mr. James was booked, you started with him in the first place from the house adjoining his residence, where you had detained him, didn't you?

A. I did not, no, sir.

Q. Isn't it a fact that he was taken from that house to the building we are now in, in your car?

A. On what date, Mr. Clark?

Q. On the day he was booked, Tuesday.

A. No, sir. The only day he was ever in my car was the day that he was arrested.

Q. Did you accompany him on that day from the house in question to the Hall of Justice, either in your own car, or in anybody's car?

A. No, sir.

Q. Now, didn't James ask you on the way between that house and this building what you were going to charge him with?

A. That was on the morning of April 19th.

Q. Whatever date it was, you and Mr. James were entirely alone on that occasion, were you not?

A. We were not. Charlie Griffen was in the car. Mr. James was in the back seat.

Q. At any rate, it is entirely accurate, is it not, to say that your work in investigating this offense that is charged against the defendant here continued right along from the time the defendant was arrested until he was booked at the County jail?

A. May I have that question again, please?

(Question read by the reporter.)

Q. It is entirely accurate, is it not, to say that your investigation of this offense that is charged here, continued right along from the time the defendant was arrested until he was booked at the County jail?

A. That is a hard question to answer just that way, Mr. Clark.

Q. Well, answer it, and then if any explanation is necessary in order to make your answer entirely clear and [fol. 1676] understandable, give the explanation.

A. I worked on the case straight through, but the first of the case I had to clean up the other charge, and then continue on with the murder case.

Q. In other words, although you were working on this offense, on this charge, you were working upon another at the same time, is that what you mean?

A. Maybe I can explain it better this way, that while I was working on this case I ran into the other case.

Q. That, however, doesn't give any explanation.

The Court: I don't think the witness has gotten your idea, Mr. Clark. Mr. Southard, shortly after the arrest of the defendant, regardless of what may have been said about any other charge, was the subject of the death of his wife brought up in the conversation on the 19th?

Mr. Clark: No, if your Honor will pardon me, that is not the scope of my question.

The Court: This is merely a preliminary question.

Mr. Clark: Pardon me.

A. Not that I recall, your Honor, on the 19th.

The Court: Well, at that time were you engaged in investigation to determine the possible cause of the death of Mrs. James?

A. Yes, I was, your Honor.

Q. And did your part in that investigation, whether it be large or small, continue up to the time that you had Mr. [fol. 1677] James booked?

A. It did.

Q. And beyond that?

A. And up to the present date.

Mr. Clark: Mr. Littleton, Mr. Martin and the other investigators that were out to the house, were working in part under your direction, were they not?

Mr. Barnes: We think that is somewhat leading, your Honor.

The Court: Objection overruled.

A. They were.

By Mr. Clark:

Q. Now, I wish you would tell us, including any efforts to get a confession from Mr. James, what was done out

at that house in the course of the investigation of this crime, after the defendant was taken into custody, and before he was booked at the County jail?

The Witness: May I have that question, please, Mr. O'Brien?

(Question read by the reporter.)

Mr. Williams: I take it by "this crime" he means the crime for which the defendant is now on trial?

Mr. Clark: The charge of murder.

A. On the evening of the 19th of April Mr. James was brought back to the house at 3882 South LaSalle. I don't recall who took him back out. Charlie Griffen and I rode out together in my car. We went to bed.

Mr. Williams: Just a moment. If your Honor please, this is obviously going over matters that have already [fol:1678] been covered.

The Court: It appears to me that the question almost answers itself. Was there any work done on the James case, other than the conversation you had with Mr. James at this house? I am referring to the homicide, or possible homicide charge.

A. Do you mean, your Honor, did we do any other work besides the homicide out there at that house?

The Court: Did you do any work in connection with the homicide charge, other than talking to Mr. James, and I am limiting the question now as to what was done at that house.

A. No, that was all that was done out there.

Mr. Clark: That is all.

Mr. Williams: That is all, your Honor. Mr. Killian.

WILLARD L. KILLION, recalled as a witness in behalf of the People, having been previously sworn, testified as follows:

Direct examination.

By Mr. Williams:

Q. Mr. Killion, on the morning of the 2nd of May, 1936, did you go up to the County jail?

A. I did.

Q. Did you there see the defendant?

A. Yes, sir.

[fol. 1679] Q. Was there anybody with you when you first saw the defendant?

A. No, sir, not in my immediate company.

Q. And where did you see the defendant?

A. In the attorney's room at the 10th floor of this building.

Q. When you first saw him did you have any conversation with him?

A. No, sir, other than "Hello, James", or "Hello, Bob".

Q. Then did you take the defendant any place?

A. I did.

Q. Where did you take him?

A. Down a corridor, along a cell block that leads from the attorney's room into a room that is known as the Chaplain's room, in the same building, and on the same floor.

Q. Now, from the time you first saw the defendant and said "Hello" to him, down to the time he arrived in the Chaplain's room, did you or any other person have any conversation with him?

A. No, sir.

Q. When you got into the Chaplain's room was there anybody there?

A. Yes, sir.

Q. Who?

A. You were there, and Deputy Gray, and Edward [fol. 1680] Lynch, and Charles Griffen and Southard. As I recall it, that is all the persons who were there.

Q. Now, was there a time when Mr. Hope came into the room?

A. Yes, sir.

Q. Was that before or after James came in?

A. As I remember it, Hope was brought into the room by Southard after I was there with James.

[fol. 1681] Q. And up to the time that Mr. Hope came into the room, was there anything said to James by any person?

A. No sir, there was no conversation.

Q. Do you remember who made the first statement that was made in the room after James got there?

A. I do.

Q. Who made it?

A. You did.

Q. When I made a statement were there statements also made by the defendant?

A. Do you mean following your statement?

A. Yes.

A. Yes, he spoke.

Q. Now at the time, or prior to the time that I made statements to the defendant and he made responses, was there any force or violence used on him by you or anybody else?

A. No, sir.

Q. And were there any offers or promises or hope of immunity or reward extended towards him?

A. There were not.

Q. Any threats made?

A. No, sir.

Q. Were all statements made by him freely and voluntarily made?

A. Yes, sir.

Q. And following the taking of that statement what happened to the defendant, James?

[fol. 1682] A. He was taken back to where I had gotten him before that.

Q. Who took him back?

A. I did.

Q. And did anybody have any conversation with him on the way back to the place where you had gotten him?

A. No, sir.

Q. He was then returned to his tank?

A. Yes, sir.

Q. Thereafter, during that day, did you see the defendant again?

A. I did.

Q. Prior to seeing him did you obtain a court order?

A. I did.

Q. Where did you see the dependant after you obtained the court order?

A. In the county jail.

Q. Did you take him out of the county jail?

A. I did.

Q. Who was with you?

A. No one was with me at the time I took him from the jail.

Q. Thereafter, did somebody join you?

A. Virgil Gray.

Q. Where did you take the defendant?

A. To La Canada.

Q. And when he was out there were other persons present?

[fol. 1683] A. Many.

Q. And then from La Canada, where did you go?

A. Back to this building, to the District Attorney's office.

Q. And did you continue in the company of Mr. James during the entire time that he was going to La Canada and returning from La Canada?

A. I did.

Q. And then after he got into the District Attorney's office did you stay in his company?

A. Yes, sir.

Q. And did you stay in his company during the entire balance of the day and night until he was returned to jail?

A. I did.

Q. Were there others there from time to time?

A. Yes, sir.

Q. Was he questioned?

A. Yes, sir.

Q. Did he make responses?

A. Yes, sir.

Q. Did he, during that period of time have anything to eat to your knowledge?

A. I know he did.

Q. Did he go any place except to the District Attorney's office? Did he get out of the District Attorney's office?

A. Yes, sir.

[fol. 1684] Q. In whose company?

A. He went out of the District Attorney's office in the company of Gray and myself and Everett Davis and Carmen Wastengs.

Q. When you went out of the office, where did you go?

A. We went to a restaurant at 5th and Figueroa in Los Angeles.

Q. And did the defendant there have food?

A. He did.

Q. He ate it?

A. Yes, sir.

Q. Then after he finished eating, did you have a conversation with him?

Q. There after was he taken back to the District Attorney's office?

A. Yes, sir.

Q. And after he got back to the District Attorney's office was a statement taken from him?

A. It was.

Q. Questions asked of his and answers given by him?

A. That is correct.

Q. And that continued up until about what time?

A. Well, it started approximately 1:00 or 1:30 in the morning—let's see, that would have been Sunday, May the 3rd and it must have finished at about 3:00 o'clock.

[fol. 1685] Q. Thereafter what was done with the defendant?

A. I took James back to the county jail.

Q. Now, during the entire time that you were in his company, did he at any time give the appearance of being afraid?

A. Absolutely not.

Q. What was his manner and demeanor and appearance during that time?

A. Well, the same as it has been on all occasions that I have observed him, that he was cool and collected and seemed to show no emotion of any kind.

Q. Were his answers responsive to the questions which were asked of him?

A. Yes, sir.

Q. Was he rational or irrational in his conversation?

A. Rational.

Q. Was he coherent or incoherent?

A. Coherent.

Q. During that entire time was there any force or violence used upon him?

A. No, sir.

Q. Any threats made?

A. No, sir.

Q. Any offers or promise or hopes extended of immunity or reward?

A. There were not.

[fol. 1686] Q. Were all statements during that time made freely and voluntarily?

Mr. Clark: That is objected to upon the ground it calls for a conclusion of the witness, no foundation has been laid therefor.

The Court: Objection overruled.

A. Yes, sir.

Mr. Williams: You may cross examine.

Cross-examination.

By Mr. Clark:

Q. Now, Mr. Killion, this occasion when you were in the Chaplain's room, was the 2nd of May, I believe, was it not?

A. It was.

Q. You took the defendant to the room upon that occasion pursuant to some plan which had been made before that, didn't you?

A. Yes.

Q. That plan was done between you and some of the investigators of the District Attorney and Mr. Williams, was it not?

A. Yes, sir.

Q. You knew that Mr. James at that time was represented by Mr. Silverman here, didn't you?

A. Yes, sir.

Q. You didn't inform Mr. Silverman that you wanted to see his client, did you?

[fol. 1687] Mr. Williams: That is objected to as immaterial, if your Honor please.

The Court: Sustained.

Mr. Clark: You didn't ask Mr. James if he wanted Mr. Silverman present, did you?

Mr. Williams: Objected to as immaterial.

The Court: Overruled, he may answer.

A. I did not.

Mr. Clark: Neither did anyone else that you know of, did they?

A. Not that I know of.

Q. Mr. Silverman wasn't there, was he?

A. He was not.

Q. Neither was any of Mr. James' personal friends that you know of, was there?

A. I don't know.

Q. The entire purpose of taking Mr. James to the Chaplain's room was obtain something by silence or admission that could be used to prosecute him with, wasn't it?

Mr. Williams: That is objected to as calling for a conclusion of the witness.

The Court: Objection sustained.

Mr. Clark: May I say to your Honor that I have, I think, heretofore asked two or three questions of a similar character that your Honor has sustained objections to, and I [fol. 1688] think I have your Honor's theory sufficiently in mind that I may say to your Honor that I will not purposely ask another question of the same kind.

* * * * *

Q. Now, after getting in the Chaplain's room there with Mr. James no one did any talking except Mr. Williams, did they?

A. That is true.

Q. Mr. Williams addressed himself to Mr. James, didn't he?

A. That is right.

Q. And he didn't tell James what the effect of Mr. James remaining silent might be, did he?

[fol. 1689] Mr. Williams: That is objected to as calling for a conclusion of the witness.

The Court: Sustained.

By Mr. Clark:

Q. He didn't make any statement to Mr. James as to whether or not silence on Mr. James part might be used against him?

Mr. Williams: Objected to as calling for a conclusion of the witness.

The Court: The same ruling.

Mr. Clark: He didn't tell Mr. James that he was at liberty to speak or not, as he saw fit, did he?

A. He didn't use those words, no sir.

Q. He didn't say anything to that substance or effect, did he?

Mr. Williams: That is objected to as calling for a conclusion as to what the effect is.

Mr. Clark: If we have to prove the exact words then all testimony in regard to conversations might as well be stricken out and omitted.

The Court: You may answer.

(Question read by the reporter.)

A. After he had made a statement to Mr. James he asked Mr. James if he had anything to say about it.

By Mr. Clark:

Q. And that is all?

A. That is all.

Q. Now, did you take Mr. James back to his tank?

[fol. 1690] A. I took him back into the attorney room.

Q. By the way, the attorneys room has a door where there is a turnkey that leads to the tank where Mr. James was confined, isn't that true?

A. That is true.

Q. And when you left the attorneys room you turned him over to one of the turnkeys there?

A. I delivered him over to one of the turnkeys.

Q. And now, after doing that you continued working upon your investigation of this charge, didn't you?

A. Yes, sir.

Q. And to that end, you went over and had some conference at the District Attorney's office next, did you?

A. As I recall, I did go to the District Attorney's office after leaving the jail.

Q. It wasn't until after you had gone to the District Attorney's office that you procured the Court order, that is true, isn't it?

A. That is true.

Q. Mr. Williams was present when you procured the court order, wasn't he?

A. Yes, I believe he was, or a short time he had been.

Q. Mr. Silverman was not present?

A. He was not.

Q. And so far as you know, Mr. Silverman was not notified that any such application was going to be made?

[fol. 1691] Mr. Williams: Objected to as immaterial.

The Court: Sustained.

By Mr. Clark:

Q. What time of the day was it that you procured your court order?

A. Well, it was about noon time. I cannot say within an hour or so, but it was near the noon hour.

Q. And about what time of day was it that you started for La Canada?

A. Very shortly thereafter.

Q. And by the way, who accompanied you on that trip?

A. Mr. Gray and Mr. James and myself were the only persons in my automobile.

Q. Did any other automobile accompany yours?

A. No, sir.

Q. About what time did you return?

A. About the middle of the afternoon.

Q. And where did you take the defendant upon your return?

A. To the District Attorney's office.

Q. Then you were then in the District Attorney's office, according to your best recollection about three or four o'clock in the afternoon?

A. That is a very close estimate.

Q. And you remained there, did you, continuously until 3 o'clock the next morning?

A. About that—oh, yes, not continuously. I will have to change that answer if you said "continuously", because I [fol. 1692] was away during that time for an hour and a half.

Q. Of course, you being away, could have no personal knowledge during that hour and a half of what went on in the District Attorney's office?

A. No, you misunderstand me. He was away with me at that time.

Q. But you and the defendant were at the District Attorney's office for about an hour and a half?

A. Yes, sir.

Q. Was anyone with you?

A. Yes sir, I have named them.

Q. I see. There is no necessity for repeating it. And it was not until about 1 o'clock that the defendant began giving the answers that have been referred to here as constituting a confession?

A. You mean the answers in the deposition or in the restaurant or—

Q. No, I mean in the District Attorney's office.

A. It must have been about 1:30 in the morning.

Q. However, most of the time that he was there, questions were being asked him, were they not?

A. Most of the time.

Q. And to quite a number of the questions, he gave no answers, isn't that true?

A. I don't believe that I could say quite a number. There may have been a few questions that he did not reply to.

[fol. 1693] Q. And didn't he, on one occasion ask if he couldn't have a chance to ask his attorney whether he should answer questions or not?

A. Yes, he did.

Q. And he was told that his attorney could not be present, wasn't he?

A. No, sir.

Q. What was he told?

A. Shall I explain what happened?

Q. Just tell what he was told and then if it requires any explanation, let that follow the answer.

A. He was told that we were attempting to get in touch with Mr. Silverman.

Q. And later he was told that you couldn't get in touch with Mr. Silverman, wasn't he?

A. A short time later, after attempting from the telephone conversation that we had with another person——

Q. Well, at any rate, you didn't get hold of Mr. Silverman?

A. That is correct.

Q. And your information was that he could not be reached?

A. Not exactly. It was to the effect that he was in Murrieta Hot Springs.

Q. The questioning was not discontinued until Mr. Silverman got back though?

A. No, it was not.

[fol. 1694] Q. And it was communicated to the defendant that Mr. Silverman was at Murrieta Hot Springs, was it not?

A. Yes, the defendant was present during the telephone conversation.

Q. Mr. Fitts told him that, didn't he?

A. Yes.

Q. And then the defendant told Mr. Fitts that he would have Mr. Parsons present?

A. Well, he asked for an attorney he had in a case. He didn't know his name.

Q. And no attempt was made to communicate with that attorney at that time?

A. Yes, we made inquiry as to who that attorney could be and finally determined that it was Mr. Parsons that Mr. James was asking for.

Q. Was Mr. Parsons communicated with?

A. No, sir.

Q. Now, how near the 22nd of April did you see Mr. James, according to your recollection, having in mind that we have been talking about the 2nd and 3rd of May?

A. I saw him on Monday night, following the 19th of April, which would have been the 20th of April.

Q. You saw him the 20th of April?

A. Yes, sir.

Q. And did you see him two or three days after that again?

A. I didn't see him again until May the 2nd.

[fols. 1695-1696] Q. Did you notice his ears being swollen and bruised on either of those occasions?

A. I didn't notice anything about that on the 20th of April and on the 2nd of May I noticed there was some discoloration of his left ear.

Mr. Clark: That is all.

Mr. Williams: That is all. Mr. Lynch.

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[fols. 1697-1698] C. W. MAPLES, called as a witness in behalf of the Defendant, being first duly sworn, testified as follows:

The Clerk: State your name, please.

A. C. W. Maples.

Direct examination.

By Mr. Parsons:

Q. Speak up so that we can all hear you.

A. C. W. Maples.

Q. And what is your business?

A. Chief Clerk of the County Jail.

Q. A Deputy Sheriff of Los Angeles County?

A. Yes, sir.

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